

No. 10939

2463

10/14  
United States  
Circuit Court of Appeals

For the Ninth Circuit.

—  
SALVATORE MAUGERI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

—  
Transcript of Record  
—

Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

**FILED**

APR 3 - 1945

**PAUL P. O'BRIEN,**  
CLERK



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Circuit Court of Appeals

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SALVATORE MAUGERI,

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Southern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California.

Attorney for Defendant and Appellant.

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United States Attorney,  
Northern District of California.

MR. JAMES T. DAVIS,

Assistant United States Attorney,  
Northern District of California.  
Post Office Building,  
San Francisco, California.

Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States District Court for the Northern District of California.

No. 28852-G

FIRST COUNT. 21 United States Code Section 174;

In the July 1944 term of said Division of said District Court, the Grand Jurors thereof on their oaths present:

That Salvatore Maugeri, Joseph Tocco, and Joseph Barri (whose full and true names are other than hereinabove stated to said Grand Jurors unknown, hereinafter called said defendants), on or about the 12th day of August, 1944, at the City of Santa Cruz, County of Santa Cruz, State of California, within said Division and District, fraudulently and knowingly did conceal and facilitate the concealment of a lot of smoking opium in quantity particularly described as 105 tins containing approximately 700 ounces of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendants then and there knew.

SECOND COUNT: 21 USCA Section 174;

And the said Grand Jurors on their oaths aforesaid do further present: [1\*]

That on or about the 13th day of August, 1944, at the City of Santa Cruz, County of Santa Cruz,

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

State of California, within said Division and District, said defendants fraudulently and knowingly did facilitate the transportation of a lot of smoking opium, in quantity particularly described as 105 tins containing approximately 700 ounces of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendants then and there knew.

FRANK J. HENNESSY,  
United States Attorney

A true bill,

CHAS. HOEHN,  
Foreman

[Endorsed]: Presented in Open Court and Ordered Filed Aug. 23, 1944.

Approved as to Form:

R. B. McM. [2]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 24th day of August, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

No. 28852-G

UNITED STATES OF AMERICA

vs.

SALVATORE MAUGERI

## ARRAIGNMENT

In this case the defendant Salvatore Maugeri was produced in Court by the United States Marshal pursuant to Bench Warrant heretofore issued. No attorney appeared on behalf of the defendant. Joseph Karesh, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Karesh, the defendant was called for arraignment. The Court advised the defendant of his constitutional right to be represented by counsel, and that if he had no means to procure counsel the Court will appoint an attorney to represent him, without cost to defendant. Defendant stated that he would obtain his own counsel.

Defendant was informed of the return of the Indictment by the United States Grand Jury, and asked if he was the person named therein, and upon his answer that he was, and that his true name was as charged, said defendant was [3] informed of the charge against him and stated that he understood the same. The Clerk read the Indictment to the defendant.

After hearing the defendant and Mr. Karesh, the Court ordered that this case be continued to August 28, 1944, to plead. Further ordered that in default of bail defendant be remanded into the custody of the United States Marshal to await entry of plea and that a mittimus issue. [4]

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 28th day of August, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis G. Goodman,  
District Judge.

[Title of Cause.]

No. 28852-G

DEFENDANT'S PLEA OF NOT GUILTY  
ENTERED

This case came on regularly this day for entry of plea and for hearing of motion on *redude* bail. The defendant, Salvatore Maugeri, was present in the custody of the United States Marshal and with his attorney, Sol A. Abrams, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to the Indictment filed herein against him, which said plea was ordered entered.

After hearing the Attorneys, it is ordered that this case be continued to September 6, 1944, to be set for trial. Ordered that the motion for reduction of bail be continued to August 29, 1944, for hearing.

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 6th day of September, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

[Title of Cause]

No. 28852-G

DEFENDANT'S PLEA OF NOT GUILTY  
ENTERED

This case came on regularly this day for entry of plea. The defendant, Salvatore Maugeri, was present in proper person and with his attorney, Sol A. Abrams, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to the Indictment filed herein against him, which said plea was ordered entered.

On motion of Mr. Davis and with consent of Mr. Abrams, the Court ordered that this case be continued to September 20, 1944, to be set. [6]

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 21st day of November, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

[Title of Cause.]

No. 28852

### MINUTES OF TRIAL

This case came on regularly this day for trial. Hon. Frank J. Hennessy, United States Attorney, was present on behalf of the United States. The defendant, Salvatore Maugeri, was present in proper person and with his attorneys, Sol A. Abrams, Esq., and M. S. Snyder, Esq. Thereupon the following persons, viz:

Walter E. Ayden	Mrs. Tillie Green
Mrs. Harriette E. Richardson	Leonard B. Daniels
Florence Fairmen	William McNamara
Claire V. Goodwin	Clyde H. Mann
John J. Niebauer	Mrs. Rita O'Connor
John R. B. Tayler	Walter L. Brown

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to

try the issues joined herein. Mr. Hennessy made a statement to the Court and Jury on behalf of the United States. Mr. Hennessy introduced U. S. Exhibits Nos. 1 and 2 for identification; and introduced and filed in evidence U. S. Exhibits Nos. 3, 4, 5 and 6. [7] Benedict Pocoroba was sworn and testified on behalf of the United States.

The hour of adjournment having arrived, the Court, after admonishing the Jury, ordered that the further trial of this case be continued to November 22, 1944, at 10 o'clock a.m. [8]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 22nd day of November, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

[Title of Cause.]

No. 28852-G

### TRIAL RESUMED

The parties hereto and the jury heretofore impanel being present as heretofore, the trial of this case was this day resumed. Benedict Pocoroba re-



sumed the stand for further testimony. Peter Scambellone, John Saccocci, Buhrl R. Harwood, Henry B. Hays, Jesse M. Braly and Emmett Gleason were sworn and testified on behalf of the United States. Mr. Abrams introduced Defendant's Exhibit A for identification; and introduced and filed in evidence Defendant's Exhibits B and C.

The hour of adjournment having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued to November 24, 1944, at 10 o'clock A.M. [9]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 24th day of November, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

[Title of Cause.]

No. 28852-G

TRIAL RESUMED

The parties hereto and the jury heretofore impaneled herein being present as heretofore, the trial of this case was this day resumed. Thomas E. Mc-

Guire, Vance Newman and George E. Mallory were sworn and testified on behalf of the United States. Mr. Hennessy introduced and filed in evidence U. S. Exhibits Nos. 7, 8 and 9; and filed in evidence U. S. Exhibits Nos. 1 and 2, formerly U. S. Exhibits Nos. 1 and 2 for identification. Benedict Pocoroba was recalled for further cross-examination. Thereupon the United States rested. Mr. Abrams made a motion for directed verdict of acquittal. Ordered said motion denied. Salvatore Maugeri was worn and testified on his own behalf. The evidence was then closed.

The hour of adjournment having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued until November 28, 1944, at 10 a.m. [10]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 28th day of November, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.

No. 28852-G

UNITED STATES OF AMERICA,

vs.

SALVATORE MAUGERI, et al.

TRIAL RESUMED—VERDICT OF GUILTY

The parties hereto and the jury heretofore impaneled being present as heretofore, the trial of this case was this day resumed. After argument by the attorneys and the instructions of the Court to the jury, the jury at 3:55 P.M. retired to deliberate upon its verdict. At 4:55 P.M., the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict which was ordered recorded, viz:

“We, the Jury, find as to the defendant at the bar as follows:

As to Count One—Guilty

As to Count Two—Guilty

WALTER E. AYDEN,

Foreman.”

The jury upon being asked if said verdict as recorded is the verdict of the jury, each juror replied that it was.

Ordered that the jury be excused from further consideration hereof and from attendance upon the Court until notified [11] to report.

Mr. Abrams made a motion for a new trial and for arrest of judgment. Ordered that this matter be

continued to November 30, 1944, for hearing said motion for new trial and for pronouncing of judgment. Ordered that the defendant be remanded into the custody of the United States Marshal to await judgment and that a mittimus issue.

Further ordered, pursuant to stipulation of the attorneys, that all exhibits be given by the Clerk of this Court into the custody of the Bureau of Narcotics until further order of this Court. Accordingly, said exhibits were delivered by the Clerk to the Narcotic Agents. [12]

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In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

No. 28852-G

THE UNITED STATES OF AMERICA,

vs.

SALVATORE MAUGERI,

VERDICT OF GUILTY

We, the Jury, find as to the defendant at the bar as follows: as to Count One Guilty; as to Count Two Guilty.

WALTER E. AYDEN

Foreman

[Endorsed]: Filed Nov. 28, 1944. [13]

[Title of District Court and Cause.]

MOTION OF SALVATORE MAUGERI IN  
ARREST OF JUDGMENT

Comes now the defendant in the above entitled action, and against whom a verdict of guilty was rendered on the 28th day of November, 1944, in the above entitled cause, and moves the Court to arrest the judgment against said defendant and hold for naught the verdict of guilty rendered against said defendant upon each and every count, for the following causes:

1. That the verdict is contrary to the evidence adduced at the trial herein.

2. That the verdict is not supported by the evidence in the case.

3. That the evidence adduced at the trial is insufficient to justify said verdict.

4. That said verdict is contrary to law.

5. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the trial court erred in admitting evidence in the course of the trial which was hearsay.

[14]

7. That the trial court erred in admitting in evidence during the course of the trial physical evidence, to wit, suitcases, cartons, wrapping paper, gummed tape, cans containing narcotics and package containing narcotics where no proper foundation had been laid.

8. That the trial court erred in permitting testimony to be given during the course of the trial concerning the physical evidence referred to in the preceding paragraph.

9. That the trial court erred in denying defendant's motion made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.

Wherefore, because of which said errors in the record hereof, no lawful judgment may be rendered by the Court, said defendant prays that this motion be sustained and that judgment of conviction against him be arrested and held for naught and that he have all such other orders as may seem meet and just in the premises.

This written motion is by leave of Court and supplements the oral motion heretofore made by said defendant, and is made upon the minutes of the Court, upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial herein.

Dated November 29, 1944.

SOL A. ABRAMS

Attorney for defendant.

[Endorsed]: Filed Nov. 30, 1944. [15]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Now comes the defendant Salvatore Maugeri in the above entitled action and moves this Honorable Court for an order vacating the verdict of the jury convicting said defendant, and granting said defendant a new trial on both counts of the indictment for the following, and each of the following causes materially affecting his Constitutional rights, to wit:

1. That the verdict is contrary to the evidence adduced at the trial herein.

2. That the verdict is not supported by the evidence in the case.

3. That the evidence adduced at the trial is insufficient to justify said verdict.

4. That said verdict is contrary to law.

5. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the trial court erred in admitting evidence in the course of the trial which was hearsay.

7. That the trial court erred in admitting in evidence [16] during the course of the trial physical evidence, to wit, suitcases, cartons, wrapping paper, gummed tape, cans containing narcotics and package containing narcotics where no proper foundation had been laid.

8. That the trial court erred in permitting testimony to be given during the course of the trial concerning the physical evidence referred to in the preceding paragraph.

9. That the trial court erred in denying defendant's motion made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.

To all of which rulings the defendant duly and regularly excepted.

This written motion, by leave of Court, supplements the oral motion heretofore made by said defendant, and is made upon the minutes of the Court, upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial herein.

Dated November 30, 1944.

SOL A. ABRAMS,

Attorney for defendant.

[Endorsed]: Filed Nov. 30, 1944. [17]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 30th day of November, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Louis E. Goodman,  
District Judge.



[Title of Cause.]

No. 28852-G

MOTIONS FOR ARREST OF JUDGMENT AND  
FOR NEW TRIAL DENIED; JUDGMENT  
AS TO SALVATORE MAUGERI

This case came on regularly this day for the pronouncing of judgment as to the defendant, Salvatore Maugeri. The defendant was present in the custody of the United States Marshal and with his attorney, Sol A. Abrams, Esq. Hon. Frank J. Hennesy, United States Attorney, was present on behalf of the United States.

The defendant was called for judgment. After hearing the attorneys, it is ordered that the motions for arrest of judgment and for new trial be and the same are hereby denied. After hearing the defendant and the attorneys, and said defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court [18] Ordered and Adjudged that the defendant Salvatore Maugeri, having been convicted on the verdict of the jury of Guilty of the offenses charged in the Indictment filed herein against him, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Ten (10) Years and pay a fine to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars on the First Count of the Indictment; and be imprisoned

for the period of Ten (10) Years and pay a fine to the United States of America in the sum of Five Thousand (\$5,000.00) Dollars on the Second Count of the Indictment (making a total fine in the sum of Ten Thousand (\$10,000.00) Dollars.

It Is Further Ordered that the sentence of imprisonment imposed by this Court on defendant on the Second Count of the Indictment commence and run at the expiration of the sentence of imprisonment imposed by this Court on defendant on the First Count of the Indictment.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

The Court recommends commitment to a U. S. Penitentiary. [19]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Name and address of Appellant: Salvatore Maugeri, County Jail, City and County of San Francisco, State of California.

Name and address of Appellant's attorney: Sol A. Abrams, 406 Montgomery Street, San Francisco, California.

Offense: First Count, a violation of Jones-Miller Act, 21 USC 174.

That the defendant did, on or about the 12th day of August, 1944, at the City of Santa Cruz, County of Santa Cruz, State of California, within said Division and District, fraudulently and knowingly conceal and facilitate the concealment of a lot of smoking opium in quantity particularly described as 105 tins containing approximately 700 ounces of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendant then and there knew.

Second Count: A violation of Jones-Miller Act, 21 USC 174.

That the defendant did, on or about the 13th day of August, 1944, at the City of Santa Cruz, County of Santa Cruz, State of [20] California, fraudulently and knowingly facilitate the transportation of a lot of smoking opium, in quantity described as 105 tins containing approximately 700 ounces of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendant then and there knew.

Dated of Judgment: November 30, 1944.

Description of Judgment and Sentence: Defendant "guilty" upon counts one and two of said indictment as above set forth.

Sentence: Defendant ten years imprisonment and a fine of \$5000 on first count; ten years imprisonment and a fine of \$5000 on second count, sentences to run consecutively.

Name of Prison where now confined: County Jail of the City and County of San Francisco.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeal of the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below.

Dated: November 30, 1944.

SALVATORE MAUGERI

Appellant

SOL A. ABRAMS

Attorney for Appellant.

### GROUND'S OF APPEAL

#### I.

That the learned trial judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of the trial.

#### II.

That the evidence produced and received upon the trial of said cause was insufficient as a matter of law to justify the verdict of the jury. [21]

#### III.

That the learned trial judge committed error in allowing hearsay evidence upon the trial of said cause.

#### IV.

That the learned trial judge erred in denying appellant's motion, made at the close of appellee's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.

## V.

That the learned trial judge erred in admitting in evidence during the course of the trial physical evidence, to wit, suitcases, cartons, wrapping paper, gummed tape, tins containing narcotics and package containing narcotics where no proper foundation had been laid.

## VI.

That the learned trial judge erred in permitting testimony to be given during the course of the trial concerning the physical evidence referred to in the preceding paragraph.

## VII.

That the learned trial judge erred in denying appellant's motion for a new trial made after the verdict and before the pronouncement of sentence, upon the grounds orally stated at the time, and supplemented by written motion filed immediately thereafter.

## VIII.

That the learned trial judge erred in denying appellant's motion for arrest of judgment made after the verdict and before the pronouncement of sentence, upon the grounds orally stated at the time and supplemented by written motion filed immediately thereafter.

[Endorsed]: Filed Dec. 1, 1944. [22]

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Comes now Salvatore Maugeri, defendant in the above entitled case, and in connection with his appeal in this case, assigns the following errors on which he relies in the prosecution of said appeal to the United States Circuit Court of Appeals:

1. That the verdict is contrary to the evidence adduced at the trial herein.

2. That the verdict is not supported by the evidence in the case.

3. That the evidence adduced at the trial is insufficient to justify said verdict.

4. That said verdict is contrary to law.

5. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the trial court erred in admitting testimony in the course of the trial which was heresay.

7. That the trial court erred in admitting in evidence during the course of the trial physical evidence, to wit, suitcases, cartons, wrapping paper, gummed tape, tins containing [23] narcotics and package containing narcotics where no proper foundation had been laid.

8. That the trial court erred in permitting testimony to be given during the course of the trial concerning the physical evidence referred to in the preceding paragraph.

9. That the trial court erred in denying defend-

ant's motion made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.

Wherefore defendant prays that the judgment and conviction herein be reversed, that his arrest and the indictment be quashed and that he be dismissed.

Dated: December 1, 1944.

SOL A. ABRAMS

Attorney for Defendant

Receipt of a copy of the within Assignment of Errors admitted this 5th day of December, 1944.

FRANK J. HENNESSY,

United States Attorney

By JAMES D. DAVIS

Assistant United States Attorney

Attorney for Plaintiff

[Endorsed]: Filed Dec. 5, 1944. [24]

---

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please make transcript of appeal to consist of following:

1. Indictment.
2. Plea of defendant.
3. Minutes of trial.
4. Verdict.
5. Motion for new trial.
6. Motion in arrest of judgment.
7. Order denying motion for new trial and motion in arrest of judgment.
8. Judgment.
9. Notice of Appeal.
10. Assignment of errors.
11. Bill of exceptions.
12. Order settling bill of exceptions.
13. This praecipe.
14. Additional and Amended Assignment of Errors.

SOL A. ABRAMS

Attorney for defendant

[Endorsed]: Filed Dec. 8, 1944. [25]

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[Title of District Court and Cause.]

#### BILL OF EXCEPTIONS

Be it remembered, that heretofore, to-wit, on the 21st day of November, A. D. 1944, before the Honorable Louis E. Goodman and a jury, the above-entitled cause came on for trial, and that upon said trial of said cause, Mr. Frank J. Hennessy, United States Attorney, appeared as counsel for the plaintiff; and Mr. Sol A. Abrams appeared as counsel



for the defendant, Salvatore Maugeri, and the following proceedings were had.

### TESTIMONY OF BENEDICT POCOROBA

For the United States.

Benedict Pocoroba, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Benedict Pocoroba. I understand and speak English. I was born in Italy, and I came to the United States in 1914, and was naturalized as a citizen of the United States in the year 1919. I am now 55 years of age. I understand and speak the Italian language also, and am of Italian ancestry. [26] My occupation is Federal narcotics agent. I have been a Federal narcotics agent for sixteen years last past. My home is in Chicago, Illinois. I arrived in Santa Cruz, California, on May 1, 1944, pursuant to orders from my superiors in the Bureau of Narcotics. Upon arriving in Santa Cruz on May 1, 1944, I was met at the bus station by Agents Newman and Hayes, of the Federal Narcotics Bureau. I registered at the Graystone Hotel under the name of Benedict Vicari.

“Q. Do you know a man named Salvatore Maugeri?      A. I do.

Q. Do you see him in the courtroom?

A. Yes; right there.

Mr. Hennessy: May the record show he points to the defendant?

(Testimony of Benedict Pocoroba.)

Mr. Abrams: Yes; so stipulated.

Mr. Hennessy: Q. Do you know him by any other name? A. Sam Maugeri.

Q. Is that the name under which he is familiarly known among his friends in Santa Cruz?

A. Yes.

Q. Sam Maugeri? A. Yes."

The witness testified further: I first met Sam, or Salvatore, Maugeri on May 7, 1944, at his concession on the Boardwalk in Santa Cruz. There was no particular name for the amusement concession; it only said, "10c You Play Until You Win." At times he personally attended to this concession and at other times his daughters helped him out. The concession was generally open for business from 9:00 o'clock in the morning until 1:00 o'clock the following morning, depending on the volume of business that was being done. After I first met Salvatore Maugeri I saw him quite frequently and conversed with him. I told him my name was Benny Vicari, and that was the name under which he knew me. I first visited the home of Mr. Maugeri at 32 Main Street, Santa [27] Cruz, and met his wife and family on May 15, 1943. At that time he had invited me to his home. He closed temporarily the concession at approximately 5:00 o'clock on the afternoon of that day, and I accompanied him to his home and had dinner there. At about 9:00 o'clock on that evening the defendant drove me to my hotel. I visited Salvatore Maugeri's home on many occasions subsequent to the first visit. I

(Testimony of Benedict Pocoroba.)

would say I visited at his home on an average of at least twice a week. On May 22, 1944, I moved from the Graystone Hotel to Miller's Apartments, located on Beach Street, Santa Cruz. Miller's Apartments are located within a block of the beach at Santa Cruz. The cabin which I rented at Miller's Apartments was a couple of blocks from Maugeri's concession on the Boardwalk.

On several occasions I accompanied Mr. Maugeri to San Francisco. On the first occasion, which was on June 5th, Mrs. Maugeri, Mr. Maugeri and myself made the trip in Maugeri's Oldsmobile sedan. We made the trip to San Francisco and returned to Santa Cruz on the same day.

On June 6th I had a conversation with Maugeri about narcotics. On that evening I had been to Maugeri's house for dinner. We left the house and were returning to his concession on the Boardwalk in a Chevy coupe which belonged to him and that he was driving at the time. No one was present but Maugeri and Myself. I told Maugeri at that time that I was not personally interested in narcotics, because I had made my money years ago and I was not engaged actively in any racket like that, but I told him I had some friends in Chicago who might be interested in it. Maugeri asked me what heroin sold for in the East, and he asked me if one can of opium will make one ounce of heroin. The next day I saw Maugeri at his concession, and he said, "Why don't you write to your friends which

(Testimony of Benedict Pocoroba.)

[28] you have in Chicago and see if we can make a connection?" I promised that I would write. Later I told him I had written a letter to Chicago. On June 15th Maugeri came to my cabin, to my cottage, and told me that he had some olive oil at his concession for me, and then I showed him a letter which I had that day received from Chicago in connection with narcotics. I showed the letter to Maugeri. According to the letter, the men in Chicago were willing to pay \$150 or \$160 a can for opium. Maugeri at that time said the best price he would sell for would be \$225 to \$250 a can in 50-can lots. In a previous conversation, when he told me that he would sooner deal in narcotics, when I asked him what kind he would furnish he said, "Mud," which is the underworld term for opium.

On July 6, 1944, I met a man by the name of Joe Tocco at Maugeri's house. I went to Maugeri's house in the morning, and Joe Tocco came from another room; I don't know whether he came from the upstairs part of the house. He was dressed in a sports shirt and all indications were that he had spent the night there. He was introduced to me as "Joe, from San Diego." I was introduced to him as "Mr. Vicari." On that evening I had dinner at Maugeri's house. Tocco was present at that time. I met Tocco at Maugeri's house several times subsequently at dinner. Tocco was stopping at Maugeri's house. Tocco visited my cabin and used it for the purpose of changing his clothes on occasions

(Testimony of Benedict Pocoroba.)

when he went to the beach to swim. This was with my permission and consent.

On July 8th I met Maugeri's son, who was home from the Navy on furlough, at Maugeri's house. At that time Maugeri introduced Tocco to Sam Maugeri, Jr., as Joe Tocco. After dinner on that evening I went to the concession, and then I went to my cottage. Shortly after I had been in my cottage Joe Tocco, Mrs. Maugeri, [29] young Sam Maugeri, Jr., and little Joan Maugeri, who is the daughter of Mr. and Mrs. Maugeri, came in. At times I went to the theater with the Salvatore Maugeri. On one occasion I accompanied Salvatore Maugeri and Joe Tocco to San Francisco. It was sometime in July. We went in a car that Sam Maugeri had purchased for his son. I think it was a Pontiac convertible coupe. Sam Maugeri drove the automobile.

On July 21st I first met a man named Joe Barri on the Boardwalk. He was accompanied by Joe Tocco. Tocco introduced me to Barri under the name of Vicari. He introduced Barri to me as Joe, and he pronounced the second name, but I was not able to catch it. I figured Barri to be about 44 or 45 years of age, and of Italian descent. He was about 5 feet 7 inches or 7½ inches tall and weighed about 160 pounds. He had two small liver marks on the right side of his face and some gold teeth. I saw Barri at Maugeri's house on that same evening, July 21st. It was the birthday of Joan Maugeri. Salvatore Maugeri, the defendant, was there,

(Testimony of Benedict Pocoroba.)

Tocco was there, and other people were present at dinner. On one occasion when I went to Merced, California, to visit with my son, I left the keys to my cottage with Sam Maugeri, telling him that if Tocco and Barri wanted to use my cabin they were at liberty to do so. I was away for about three days.

Barri and Tocco rented a cabin near Felton, in the Santa Cruz Mountains, on the 26th of July. They were there until August 6th. On one occasion I visited their cabin with Mrs. Maugeri and with Joe Tocco, who had come into Santa Cruz to buy some groceries. Mrs. Maugeri and I later returned to Santa Cruz that same evening. I have a son who is a pilot in the Army Air Forces. He is stationed at Merced, California. Early in August of this year I had a conversation with Salvatore Maugeri about the fact of my son being a pilot in the Army Air Forces. [30] At that time Maugeri already knew about my son, having met him on a weekend that my son visited me at Santa Cruz. In August of this year Maugeri and I had a conversation about my son operating an airplane. He asked me if my son could fly out of the country. I told him I didn't know, but that I would find out. The next day I told Maugeri that I had spoken to my son over the telephone and that my son told me he would be allowed to fly to Canada and to Mexico. Maugeri stated that it would be a good chance to fly his plane to Mexico and get a load of opium and bring it into this country.

(Testimony of Benedict Poceroba.)

On August 8th I had dinner at Maugeri's house. Joe Tocco, Joe Barri, and the other members of the Maugeri family were also present. After dinner we went to the Boardwalk. After strolling around Joe Tocco, Joe Barri and myself went to my cabin and had some coffee. Before leaving my cottage Joe Barri said they were leaving the next day——

“Mr. Abrams: Are you going on and relating the conversation now? If you are, I want to make an objection if it is timely. Are you asking for the conversation?”

Mr. Hennessy: Yes.

Mr. Abrams: I object to it as hearsay. Was Mr. Maugeri there?

Mr. Hennessy: No, he was not. We claim there was a partnership.

Mr. Abrams: It is hearsay, then.

Mr. Hennessy: A partnership in crime, a conspiracy between Salvatore Maugeri, Joe Barri, and Joe Tocco, to deal illicitly in narcotics, and that evidence of any one of those three men is admissible against the others in pursuance of the conspiracy.

Mr. Abrams: There is no conspiracy charged here. [31]

Mr. Hennessy: We don't have to charge it; we have a right to rely on the proof of a conspiracy, and that is what we are relying upon in this case. Those men were partners in the illicit business of dealing in narcotics, and an action done by any one of the conspirators in furtherance of the conspiracy is admissible against the others.

(Testimony of Benedict Pocoroba.)

Mr. Abrams: If the Court please, Mr. Hennessy and the men in his office, for some reason far beyond my realization in this matter, have not charged these defendants with conspiracy. They are charged on two counts with violation of the Jones-Miller Act—

The Court: I will sustain the objection for the time being. Maybe if you can connect it up further—

Mr. Hennessy: As a matter of law, we don't have to charge a conspiracy. We can prove the conspiracy as a matter of proof.

Q. For the purpose of the record I will ask you: What conversation, if any, did you have with Joe Barri and Joe Tocco on the evening of August 8, 1944, relative to them leaving Santa Cruz?

Mr. Abrams: Well, now, your Honor has just ruled on that.

Mr. Hennessy: I just asked for the record. You can make your objection.

Mr. Abrams: Well, I have—

The Court: The objection is sustained. Counsel can come back to this afterwards."

The witness testified further: I remained in Santa Cruz and on Thursday evening, August 9th, I again saw Maugeri a little after 9:00 o'clock at his concession. At that time Maugeri asked me if either Joe Tocco or Joe Barri returned to Santa Cruz [32] if I could accommodate them in my cabin. Inasmuch as I had one double bed and one single



(Testimony of Benedict Poceroba.)

bed, and that if they desired to sleep in the double bed in my cabin they could do so. When I returned to my cabin on that evening Joe Barri was already in my cabin. On Thursday evening, August 10th, Maugeri came to my cabin at about 11:00 o'clock. Joe Barri was present with me. At that time Joe Barri told Sam Maugeri that he had been followed while in San Francisco, and he said, "That is not the proper thing to do, to take me to a strange city, put me on a hot spot and let the police look me over." Sam Maugeri answered that he was crazy, that he did not know what he was talking about, that he had taken him among friends, and that nobody had followed him. Joe Barri then told Maugeri—he said, "Listen, I am from New York, and I know when I am being followed. You don't have to tell me." He said, "Furthermore, what good did it do bringing the grips into your friend's house when he wouldn't give me permission to load the stuff?" Maugeri replied that he had been in too much of a hurry, that he was nervous and excited, that there would have been other ways of loading the stuff. Maugeri then said, "I had the man bring the stuff in San Francisco, and from San Francisco he has to bring it here." Barri told him, he said, "Well, we don't do business like this in New York. Whenever we have a stranger in New York for business purposes we always look after his safety." Maugeri then left the cabin, and Barri remained all night with me. I did not see Tocco on Thursday, August 10th. I saw Tocco on Friday evening, Aug-

(Testimony of Benedict Pocoroba.)

ust 11th, when he came to my cabin with three pieces of luggage, one brown leather suitcase, one black Gladstone, and a blue canvas hand bag. The brown leather suitcase and the blue overnight bag that are now being exhibited to me appear to be the same articles that Tocco brought to my cabin at that time.

[33]

(The brown leather suitcase and the blue overnight hand bag were marked as Government's Exhibits 1 and 2 For Identification, respectively.)

The witness testified further: When Tocco came to my cabin after 9:00 o'clock on that evening with the suitcase and the Gladstone bag and the overnight bag Barri was already there. Tocco and Barri slept in the cabin on that evening. On the following morning, Saturday, August 12th, Maugeri came to my cabin shortly after 9:00 o'clock. A conversation took place, at which Maugeri, Tocco, Barri and myself were present. At that time Maugeri told Barri, "The man is here again and I have already given him the money. Now, it is entirely up to you. You take the stuff or they will dump it in the ditch." At that time Barri said, "I don't know how you people do business in California." He said, "Where do you expect me to pack this stuff, in the street? Your friend in San Francisco won't give me permission to pack it in his house; you won't give me permission to pack it in your house. What am I to do?" Maugeri then got up and said,

(Testimony of Benedict Pocoroba.)

“I am going to work. Think it over and let me know.” Maugeri then left the cabin shortly after 9:00 o'clock on that morning. About 5:00 o'clock in the afternoon of that same day Joe Tocco was in my cabin, and he asked me for permission to pack the opium in my place. I agreed. Tocco then left the cabin, and returned in about ten or fifteen minutes. Barri was in the cabin with me at the time Tocco returned. The cabin consists of a combination living and bedroom, a kitchen and a bathroom. In the combination living and bedroom were two beds, a double bed and a single bed. On the previous night Tocco and Barri had occupied the double bed and I had occupied the single bed. After 11:00 o'clock on Saturday evening, August 12th, Joe Tocco and Joe Barri and myself being present, Maugeri came into the cabin carrying a [34] pasteboard box covered by newspaper. He gave it to Tocco, who put it on the floor. Maugeri then went away and came back a few minutes later with another box about the same size, also wrapped in newspaper, and Tocco received it. I then mixed a drink and gave it to Sam Maugeri. He drank it in a hurry and went away. Maugeri had no conversation with Tocco or Barri at this time and place. When Maugeri left he said to Tocco, “I will pick you up at 5:00 o'clock.”

“Q. Now, after Salvatore Maugeri left what happened?”

A. Well, Joe Tocco reached under the single bed. He had the big suitcase under the bed.

(Testimony of Benedict Pocoroba.)

Mr. Abrams: I am going to object to this as not binding on the defendant.

Mr. Hennessy: It is the concealment of opium which Salvatore Maugeri aided and abetted.

Mr. Abrams: What happened out of his presence wouldn't be binding.

Mr. Hennessy: It is part of the *res gestae*.

The Court: I will overrule the objection.

Mr. Hennessy: May I have the reporter read the question, may it please your Honor?

(Question read.)

Mr. Hennessy: That is Government's Exhibit 1 For Identification, the tan suitcase that was under the bed?      A. Yes, sir."

The witness testified further: Tocco opened the suitcase and took out some brown-colored wrapping paper and some paper tape.

"Mr. Abrams: May my objection go to all this line of testimony the witness is referring to, what took place in the cabin after Maugeri left, and out of Maugeri's presence? [35]

The Court: Very well."

The witness testified further: Tocco produced a small mail scale. They cleared the bureau of all the articles there were on it, and they placed the scales on the bureau, and Joe Barri started to weigh each individual can of opium, and Joe Tocco would mark down the weight.

"Mr. Hennessy: Proceed.

(Testimony of Benedict Pocoroba.)

“A. Joe Barri asked me if I had a pair of gloves, and I told him, ‘What do you want the gloves for?’ ‘Well,’ he said, ‘in the laboratory’—

Mr. Abrams: Well, just a moment. My objection goes not only, your Honor, to the testimony of the witness as to what occurred, but also any conversation that took place.

Mr. Hennessy: It is all part of the *res gestae*.

The Court: Since the first objection was made, I will overrule your objection. You may have an exception.

Mr. Abrams: All right; exception, your Honor.

A. (continuing): Joe Barri said, ‘In the laboratory we always use gloves so that we don’t leave any fingerprints in the cans or on the utensils.’”

The witness testified further: I told him I had no gloves, but I offered him a pair of very new socks. He tried to work with the socks, but he couldn’t, so he just used his bare hands. They weighed each can separately and they marked the weight on a piece of paper, and then they started to wrap it in brown wrapping paper into bundles and tied the bundles with gummed paper tape, and then put the bundles in the brown leather bag and the blue overnight bag. The big bag was then placed under the bed and the small bag on a chair. They finished weighing the cans around 1:00 o’clock, which would then be Sunday morning, August 13th. I went to bed at that time. The cans which they had wrapped [36] were the ordinary 5-tael cans in which opium is usually packed, familiar with the size and appearance of

(Testimony of Benedict Pocoroba.)

them. I retired in the single bed at about 1:00 o'clock, and Barri and Tocco did not retire until 2:00 o'clock. They occupied the double bed in my cabin. At about 3:30 somebody rapped at the door and Joe Tocco went to the door and opened it, and Sam Maugeri said, "Let's get the grips and let's go." Tocco was dressed; he hadn't undressed for the night, but he had taken his shoes off. Tocco then took the brown leather suitcase, Government's Exhibit 1 For Identification, and the blue overnight bag, Government's Exhibit 2 For Identification, and left the cabin. Barri and I remained in the cabin. I have seen the two cardboard boxes you are exhibiting to me before. Here are the marks I put on each cardboard box. These are the two cardboard boxes brought into my cottage by Sam Maugeri with the opium on the night of August 12, 1944, at Santa Cruz.

(The two cardboard boxes were then marked U. S. Exhibits 3 and 4 in evidence, respectively.)

The witness testified further: Barri and I got up about 8:30 that morning, dressed and had breakfast, and then went out of the cabin at about 9:30. We took a walk around and then we went back to the cabin. Subsequently we left the cabin. Barri wanted to go to the bus depot to consult a time table. He fixed his Gladstone bag and we took a taxi and we drove to the bus station. I left him there around 11:00 o'clock or thereafter on Sunday morning, August 13, 1944, and I have not seen him since.

(Testimony of Benedict Pocoroba.)

Upon leaving Barri at the bus depot I endeavored to contact some of the Federal narcotic officers who I knew were in Santa Cruz, by telephone, and nobody answered. I then took a taxicab and went to the Casino, hoping that I might meet one of them. [37] Upon leaving the taxicab I saw Sam Maugeri coming down the hill with some friends of his. The time was then about 11:30. I walked with Maugeri and his friends to his concession. I stood there just as short a while as I possibly could and then I got to a telephone and I contacted Agent Newman, and I made an appointment with him. I later met him and other narcotic agents and reported what happened. Later that day I went to San Jose and contacted the District Supervisor, Major Manning, and made a report to him. I later went to the Oakland Mole in an effort to locate Tocco on any train leaving for the East and was unable to find Tocco. I then left San Francisco late Sunday evening for Santa Cruz, arriving there at 1:00 or 2:00 o'clock on Monday morning. I immediately went to my cabin. There were present at that time at the cabin Vance Newman, Thomas McGuire, Earl Smith, from the Bureau of Customs, and Jess Braly. Upon arriving at the cabin I delivered the two cardboard boxes with the traces of opium in them, U. S. Exhibits 3 and 4 in evidence, and the brown wrapping paper, and the brown gummed paper tape which you are now exhibiting to me to Agent McGuire in my cottage on Monday morning, August 14th.

(Testimony of Benedict Pocoroba.)

“Q. Where did you obtain this brown wrapping paper and this gummed paper?”

Mr. Abrams: My objection to this line of testimony in respect to this paper and gummed tape carries the same objection I made to the other answers, that it is not binding on the defendant and is incompetent, irrelevant, and immaterial.

The Court: All right.

Mr. Hennessy: May I have the reporter read the last question, your Honor?

(Question read.)

Mr. Hennessy: Q. Where did you get it? [38]

A. The brown paper and the brown paper tape were left in my cottage by Joe Tocco and Joe Barri after they used whatever portion they needed to wrap the cans of opium.

Mr. Hennessy: I will offer this brown paper and also this gummed tape in evidence and ask they be marked Government's Exhibits; for the paper, No. 5 in evidence, and the tape, No. 6 in evidence.

Mr. Abrams: I will object as incompetent, irrelevant, and immaterial, and not binding on the defendant.

The Court: Objection overruled. You may have an exception.

Mr. Abrams: All right; Exception, your Honor. Thank you.

The Court: The exhibits may be admitted.”

(The brown paper was marked U. S. Exhibit 5 in evidence; the gummed paper tape was marked U. S. Exhibit 6 in evidence.)



(Testimony of Benedict Pocoroba.)

The witness testified further: I then returned to San Francisco on Monday. Later, on Wednesday afternoon, August 16th, I returned to Santa Cruz.

“Q. Did you see Salvatore Maugeri?

A. I did, sir.

Q. Where? A. At his concession.

Q. On the beach? A. Yes, sir.

Q. At about what time?

A. Oh, I think it was about 4:00 o'clock.

Q. Did you have any conversation with him about Joe Tocco?

A. Yes, I asked Sam Maugeri if he had heard——

Mr. Abrams: Now, just a moment. This would, I take it——

Mr. Hennessy: It is an admission against interest.

Mr. Abrams: Apparently this was at the date of the alleged offense stated in the indictment.

Mr. Hennessy: Yes; it is an admission against interest. [39]

Mr. Abrams: It can't be an admission against interest in this case; it is a statement made subsequent to the date of the alleged offense in the indictment.

The Court: There is no question, is there, that if you have a later conversation with the defendant after the commission of the offense—I will overrule the objection. You may have an exception.

Mr. Abrams: Exception, your Honor.

(Testimony of Benedict Poceroba.)

Mr. Hennessy: Q. What conversation did you have, if any, with Maugeri?

A. I asked if he heard from the boys, and he said, 'No,' and he said, 'If I don't hear from them again I would be glad. They are certainly lousy. Joe Tocco was introduced to me by a friend of mine, and the others were lousy.' And I asked him where he took Joe Tocco and he said to Berkeley.

Q. Did you participate in the arrest of Salvatore Maugeri? A. No, I didn't, sir."

#### Cross-Examination

While in Santa Cruz I used the name of Vicari as my last name and Benedict, or Benny, as my first name. My real name is Benedict Poceroba. I was born in Sicily and speak the Sicilian dialect, but I understand most of the dialects. Sam Maugeri, Joe Tocco and Joe Barri do not come from the same part of Italy that I came from. Maugeri said he came from Calabria, which is on the peninsula forming the toe of the map of Italy. Barri was from Puglie, which is in the southern part of Italy, close to Sicily. Tocco speaks Sicilian. Maugeri, Tocco and Barri all spoke Italian and I understood it. At times we conversed in Italian. I came from Chicago to San Francisco, leaving Chicago April 23, 1944. I arrived in Santa Cruz on May 1, 1944. I am an agent of the Narcotic Division in Chicago and I was di- [40] rected by my supervising director to come to San Francisco and to report to the supervising director at San Francisco, which I did. Before leaving Chicago I did not know a man by the

(Testimony of Benedict Poceroba.)

name of Lagaipa, nor do I remember ever having heard of such a man. Upon arriving in San Francisco and reporting to the supervising director here I took orders from him and worked under his supervision, and with the cooperation of other Federal narcotic agents of this district, including Vance Newman and Thomas McGuire. I was acting in the capacity of an undercover agent for the Narcotics Division under the supervising director in San Francisco.

Shortly after arriving in San Francisco I learned of a man by the name of Lagaipa, who was at that time understood to be in or about Santa Cruz. Lagaipa was recently from New York, and I was advised that he was known to have trafficked in narcotics in New York for some long period of time. I was also told by my supervising director shortly after my arrival in San Francisco of a man named Joe Tocco, who was also from New York, and who is a co-defendant in this case, who has already entered a plea of guilty to the charge contained in this indictment. I learned that Lagaipa at that time was living at an address in Santa Cruz. I was informed that Lagaipa, upon arriving in Santa Cruz, some three years before, from the East, had engaged in business, but at the time I arrived there he was no longer in business. I learned that Lagaipa was acquainted with Maugeri, and that Lagaipa had received his mail at Maugeri's house. I also learned that Joe Tocco was acquainted with Maugeri. I do not know of the contents of the mail that was re-

(Testimony of Benedict Poceroba.)

ceived by Lagaipa at Maugeri's house, just the fact that mail was received there. Lagaipa, after coming here from the East and going to Santa Cruz, and establishing himself there with [41] his family, went into the restaurant and bar business for a period of time. I first met Joe Barri in Santa Cruz. The moment I met him I could see by his way of speaking that he was from New York. However, I ascertained that both Barri and Joe Tocco were from New York, and also Lagaipa. The files showed that Lagaipa was a man with a long criminal record in New York involving narcotics. My purpose in going to Santa Cruz as an undercover agent and under the assumed name of Vicari, was to conduct an investigation of people who were under suspicion of trafficking in narcotics and by keeping my identity secret I hoped to obtain information concerning such trafficking in narcotics. During this investigation, if narcotics had been offered for sale to me I would have bought them with funds provided by the Narcotics Division, in order to apprehend anyone trafficking in narcotics. When I first arrived in Santa Cruz I registered at the Graystone Hotel under the name of Vicari, and from that time on I was known to everybody down there by that name. Of Lagaipa, Maugeri, Tocco and Barri, after my arrival in Santa Cruz, Maugeri was the first one whom I met. I had been advised that Maugeri had a concession on the Boardwalk, and I went looking for him. At that time I also knew Lagaipa was in Santa Cruz, and I had his home address. At that

(Testimony of Benedict Pocoroba.)

time I had been advised that Maugeri and Lagaipa were friendly. I had been in Santa Cruz about a week before my first contact with Maugeri, which was on the evening of May 7th, at his concession on the Boardwalk. At that time I just said "Hello" to him, while I watched my son and a bunch of young officers play the game at Maugeri's concession. At that time my wife was with me and my son, and he had a bunch of young officers there, and at my instigation they were playing at Maugeri's concession. I had my son make a special trip to Santa Cruz from Merced, California, for the purpose of assisting me in this way. It was [42] at my suggestion that he brought his friends, and we then went to Maugeri's concession for the purpose of striking up a conversation with Mr. Maugeri and becoming acquainted with him, which I did. I then saw Maugeri on the Boardwalk at his concession each day that he was operating. I had my son and his friends play so that I could become well acquainted with him, and to obtain his confidence, which I succeeded pretty well in doing; so well, that it was not many days before I was eating at Maugeri's house on an average of twice a week. In the process of becoming better acquainted with Maugeri, and in order to work into his confidence, I let him know I was an Italian, that I spoke Italian, and probably came from the same part of Italy. Among other things we talked about, I told him I was in an automobile accident, and that I had come to California from Philadelphia, Pennsylvania. I also

(Testimony of Benedict Pocoroba.)

told him that I had been in El Paso, Texas. I did not tell Maugeri that I had come here for my health. I told Maugeri that I had a son who was in the Air Force, and that being stationed in Merced, California, he visited me on week ends. I also told Maugeri that I had difficulty in eating on account of my jaws, that I had been having trouble with my jaws. Maugeri invited me to his house, where I met his family, which consists of three daughters and a son, all of whom I met. Maugeri's son is in the Navy. I dined frequently at the Maugeri home, and once a week I used to buy chicken and bring it over there, and Mrs. Maugeri prepared it. At the beginning I asked Maugeri if I could board at his home. I was treated like one of the family, and the Maugeri children addressed me as "Uncle Benny." I did present things to the children, and was considered or thought of as one of the family by the children, as well as Sam Maugeri. At times I accompanied Mr. and Mrs. Maugeri and the children to shows. I accompanied Mr. and Mrs. Maugeri to [43] San Francisco. On one occasion, the night of July 8th, when Sam Maugeri, Jr., came to Santa Cruz on a furlough Mrs. Maugeri visited at my cabin with her son and Joan and Joe Tocco.

I indicated to Sam Maugeri that I was retired, and that I was living on an income of about \$500 a month out of real estate. Maugeri indicated his desire to have an income like that, and to be able to live like that. Whenever I ate at Maugeri's house

(Testimony of Benedict Poceroba.)

and he would be driving down later, why, naturally, I would drive with him to my home. During the time of my acquaintance with the Maugeri family I observed that Sam Maugeri went to his concession on the Boardwalk mostly every day. He generally went about nine or ten o'clock in the morning and sometimes stayed all day. He would go home for dinner and then return in the evening to his concession, and he would be there until late at night, sometimes closing at twelve or one o'clock. At times his daughters would help him at the concession. At times I went to the concession and assisted him in picking up the rings and worked right along with him. Sam Maugeri told me that he had worked in the concession there for quite a few years.

About a week after I first met the defendant Maugeri I met Lagaipa at Maugeri's house. I am absolutely sure it was not at Maugeri's concession that I met Lagaipa, but at Maugeri's house. The date was May 22, 1944. I attempted to become as well acquainted with Lagaipa as I could, pursuant to my instructions. I attempted to gain his confidence and find out what I could about Lagaipa, what he was doing in Santa Cruz, if he was trafficking in narcotics, and to attempt to capture him if I could. Lagaipa was an Italian from Southern Italy, and he and I spoke the same language, and in that way it was easy for us to become friendly. However, I never became very well [44] acquainted with Lagaipa, at least not as well acquainted with Lagaipa as I became with Maugeri. I attended a show with

(Testimony of Benedict Pocoroba.)

Lagaipa once. I never visited at Lagaipa's house, but he drove me to my cabin the night of May 22nd. We went to the show together with the Maugeri family on that evening, and after the show we went back to the Maugeri house and we had some peaches and some coffee royals, and it was pretty late at night, so Charlie Lagaipa drove me to my cottage. The last time I saw Lagaipa was either May 30th or June 2nd, and I haven't seen him since. He disappeared mysteriously and supposedly has been killed. He has not been seen by myself or other agents since that time.

It was on the 6th of June, 1944, that Maugeri started talking to me about narcotics, which was about a month after I had first met Maugeri. The subject started when Maugeri said he had been convicted for counterfeiting in 1935 and that the counterfeiting racket was lousy, the only ones that made money are the ones that print the money. He said he would sooner deal in narcotics than in counterfeit money. At that time our files showed Maugeri's criminal record, and I had known of Maugeri's record before he told me. Maugeri was the first one to mention narcotics, and I don't know what brought it about; it was just daily association, and talking about various rackets and this and that, as naturally you do when two oldtimers get together, and as I thought it was my duty to talk about rackets while here working on this Maugeri case. I told Maugeri about my \$500-a-month income, and Maugeri won-



(Testimony of Benedict Pocoroba.)

dered how I was getting such a nice income every month, and he kind of envied me and wished he had an income like that, he was just a poor man, and had a big family to take care of, and wondered how I did so well. I told Maugeri at that time that I used to be in the [45] narcotic racket in New York, that that is where I used to make my money. I told him that to get into his confidence. It was then that he asked me a question about narcotics.

In my earlier testimony I said that I am not crippled. I did not tell Mr. Maugeri I was crippled. I don't consider myself crippled. I am physically impaired, but not crippled. That is the condition I spoke about concerning my jaws. I have a scar on my left leg that is observed when I am in my bathing trunks. Maugeri could see it. Tocco, naturally, saw it also. I did not show the scar in any particular way when talking about my crippled condition. It was evident. I didn't make a special show of it. On only one occasion did I go to the show with Lagaipa. At that time Mr. and Mrs. Sam Maugeri, Joan Maugeri and Jean Maugeri accompanied us. On other occasions I went to the show with members of the Maugeri family alone, but only once with Lagaipa. I have attended shows with Tocco and Barri together.

During the month and six days that I was working myself into Mr. Maugeri's confidence and Mr. Lagaipa's confidence before talking about narcotics on June 6th, I had not seen Tocco then. At about the time we began to talk about narcotics, I did men-

(Testimony of Benedict Pocaroba.)

tion that I had dealt in narcotics in a substantial way before in New York. I let Maugeri believe I had been a sizable narcotics dealer in the past in New York. I also, in order to gain his confidence, let Maugeri believe that I used to import the stuff from Germany, and that I used to have someone on the boats that used to pay off and take care of things for me on the boats; also, that I had a good contact, narcotic contact, in Chicago, and that if he, Maugeri, had some stuff out here that I had a good contact in Chicago, somebody there who would take it off his hands. Maugeri, in my mind, was to be the source of supply, [46] that is where the stuff was supposed to come from, and then to be disposed of elsewhere, either Chicago, or Texas, or some other place. In that connection I let Maugeri believe that I had a contact with somebody in Chicago who could take the stuff if he could get it. I told Maugeri that I had written a letter to Chicago in connection with my efforts to dispose of narcotics there, to find an outlet for narcotics there. Shortly after that I showed Mr. Maugeri a letter which was supposed to be an answer to the letter I had told Maugeri I would write, but which, in fact, I had not written, but which was part of the plan. Mention was made in the letter about El Paso, that somebody had sent some stuff, meaning narcotics, to the same party, or somebody, in El Paso, Texas, before, and that it was not very good stuff, something was wrong with it, and requesting a sample this time, and if the sample

(Testimony of Benedict Pocoroba.)

was good, or O. K., they might consider buying it. There was no mention in the first letter, or the answer to the first letter, about the price quoted as being too high, or not wishing to pay for the stuff in advance, that that was not the way they did business in Chicago. I showed Mr. Maugeri a second letter which was also written in Italian, and that was supposed to have come from the same party in Chicago. I will produce these letters for you.

In speaking of these narcotics to Mr. Maugeri, an Italian pronunciation was given to the words "tomato paste."

After the initial visit of my son from Merced, California, when he came with some friends I did not meet the friends any more, but, naturally, my son came several times to visit with me in Santa Cruz by himself on week ends. On one occasion he visited at the Maugeri house. He never met Tocco and Barri. My son is an instructor pilot in the Air Corps and has about 1700 hours in the air right now. I did not tell Mr. Maugeri, as [47] part of my plan, that my son in the Air Force made trips, and that it would be very easy for him to go to Mexico or Canada and get opium and hide it in the plane, and nobody would suspect him because he was an Army pilot and was in the Army Air Corps. There was some talk about that, but it was Maugeri's suggestion. He asked me if my son could fly out of the country, and I told him that I didn't know, I had to find out from my son. Afterwards I told him that my son had told me that he was allowed to fly to

(Testimony of Benedict Poceroba.)

Canada and Mexico, and it was then that Maugeri expressed the idea of having my son go down to Mexico with his plane and load it up with opium and bring it in. I then said I would have to talk to my son about it, which I did, and my son was tickled to death, he wanted to go through with it. I did not have my son talk to Mr. Maugeri about that, but I did talk to the district supervisor, Mr. Manning, and he dissuaded me from the idea because it was not practicable; he did not think I could get permission from the Army Air Corps to get mixed up in a dope deal. I did have in mind having my son actually make such a trip. He wanted to talk to the Army Intelligence and get permission from them, but Mr. Manning said he didn't think the Army would sanction that. I was perfectly willing to go ahead with such a scheme, using my son for that, if I could have gotten permission from the Army, or Mr. Manning. My son is 23 years of age. I did tell Mr. Maugeri that I would probably arrange with my son to do that.

On the 9th of August, when Tocco and Barri were driven to San Francisco by Mr. Maugeri, I believed from what they indicated to me that they were leaving for New York, or the East. However, a day or two following that I saw Barri back in Santa Cruz. He stayed in my cabin that night. I had met Mr. Maugeri on the Board walk and at that time I did not know that Barri and Tocco [48] were back in Santa Cruz, or that they intended to come back, as I thought they were on their way to New York. It

(Testimony of Benedict Pocoroba.)

was at this time that Maugeri asked if either one of them came back if they could use my cabin, or stay at my cabin, and I gave permission for them to do so. I then immediately went to my cabin and found that Barri was already there. I don't know how long he had been there. It did not occur to me that Maugeri just assumed I would give them permission and that it was a needless act to ask me. I figured Maugeri would feel that I naturally would not refuse them permission, but, naturally, that he would ask me permission before the men could get in there. Barri was already in my cabin at the time Mr. Maugeri was asking my permission.

On the several week ends that I left Santa Cruz and said that I was going to visit my son in Merced I actually went to San Francisco to discuss matters with my office.

On the night of August 9th, when I got to my cottage and found Barri there, Barri was so nervous he was not able to go out, he was afraid to go out the door, so he asked me to go to Sam Maugeri to get in touch with somebody in San Francisco to see that Tocco got safely back to Santa Cruz. Maugeri gave me a telephone number to call, which was a saloon at 1371 Grant Avenue. Maugeri was too busy working at the concession at the time and did not have an opportunity to phone, himself. The reason that Mr. Barri wanted to phone to Tocco in San Francisco was to tell him to bring the suitcases back.

(Testimony of Benedict Pocoroba.)

When Tocco first came to Santa Cruz he stayed at the home of the defendant, Maugeri, and later got a cottage of his own with Barri at Felton, in the Santa Cruz Mountains, where they lived from July 26th to August 6th. They then returned to Maugeri's house. Joe Barri stayed in my cabin from August 10th until the [49] morning of the 13th, at eleven o'clock. Tocco stayed in my cabin from the night of the 11th to the early morning of the 13th. Before that time Tocco frequently used my cabin for the purpose of dressing and undressing when going to the beach. When Barri first came to Santa Cruz he also stayed at Maugeri's house for a short period, and then he later lived with Tocco. I arrived in Santa Cruz on May 1st and went to the Graystone Hotel, where I lived from May 1st to May 22nd. I then moved to the Miller Apartments and was assigned Apartment 4, where I remained until the time I left Santa Cruz, which was the 14th of August. I have already testified about visiting the Maugeri home during all of this time, and eating there, and socializing with Maugeri and his family, and also seeing Maugeri on the Boardwalk almost daily, and at times helping him out at his concession. I have also testified that Mrs. Maugeri visited my cabin on one occasion with her son and little daughter and Joe Tocco. Maugeri never visited me at the Graystone Hotel, but he came once in a while to the Miller Apartments. Occasionally he came from the Boardwalk to my apartment, and had a drink with me.

(Testimony of Benedict Pocoroba.)

On Saturday, August 12th, which was during Maugeri's busy season at the concession, Maugeri came to my cabin about nine o'clock in the morning and stayed ten or twelve minutes. He left, saying he was going to his concession. I saw him at his concession during the day, but I did not go down to the Boardwalk during the evening. Around eleven or eleven-thirty that evening Maugeri carried U. S. Exhibits 3 and 4 in evidence into my cabin one at a time. Each of the cartons was full of opium cans and a newspaper was tucked in at the top of each carton, underneath the top flap. All I could see at that particular time was the exterior of each of the closed cartons. Maugeri handed the cartons to Tocco and Tocco then put them on the floor. Maugeri then [50] just had time for a drink and left.

“Q. Now, at that time, while Mr. Maugeri was there, you did not see anything inside the boxes, the boxes were just put on the floor and left there, and they weren't disturbed until after Mr. Maugeri left?

A. That is right.

Q. They were not opened until after Mr. Maugeri left?      A. That is right.

Q. All you saw were the cartons in that condition?      A. That is right.

Q. And nothing was said about them, they were just left on the floor, and left there, and Mr. Maugeri had a quick drink and left?

A. That is right.

Q. Although, in fairness to you, you did say

(Testimony of Benedict Poceroba.)

something about Maugeri saying, 'I will be back at 5:00.' A. At 5:00 o'clock.

Q. 'I will see you at 5:00 in the morning,' or just 'at 5:00'?

A. Just at 5:00, something like that."

The witness testified further: When Maugeri came to the house at that time I was in the living room, or the bedroom, whichever you wish to call it, because it is a combination living and bedroom. As you open the front door you enter the combination living and bedroom. There is a kitchen on the right and the bathroom is to the left. I was near the kitchen door at the time Maugeri came to the cabin. I was probably eight or nine feet from the front door when he entered. I was not doing anything in particular, maybe lighting a cigarette. I was dressed. The lights were on. It was dark outside. At that time there was a knock on the door and Barri opened the front door. Both Barri and Tocco had been in the cabin with me prior to this time for the entire evening, with the exception that Tocco had left shortly after five o'clock for ten or fifteen minutes, but had [51] come right back. Tocco did not bring these boxes into the cabin.

"Q. Are you sure about that?

A. Absolutely sure.

Q. Isn't it a fact that Tocco carried one box in first and then went right out again and brought the other box in, and Mr. Maugeri happened to be coming into your house at just about the same time?

A. No, sir.



(Testimony of Benedict Pocoroba.)

Q. It was just a coincidence that Mr. Maugeri happened to be coming down to your place at that time?      A. No, sir.

Q. Just to have a drink with you and go back to the concession?

A. He had the drink all right, but he brought the boxes in.

Q. He went right back to his concession after he had the drink?      A. Yes.

Q. And worked until about 1:00 or 2:00 o'clock?

A. I don't know how late he worked."

The witness testified further: I did not see anybody else outside the house at the time the boxes were brought in, nor did I hear any noise outside of cars, trucks, or anything. I heard no voices and did not see anyone else except Maugeri when he brought the cardboard boxes in one at a time and gave them to Tocco, who put them on the floor. Maugeri then left. I did not watch to see where he went, although the door was partly opened, because I did not wish to appear suspicious. I do not know if any agents were watching the premises at that time. Later I ascertained from discussions with Mr. Newman and the other agents that my cabin and the premises surrounding it were not under surveillance at that particular time, so none of the agents were able to observe what was taking place in front of the cottage, or about the cottage at that time. I did not see where Mr. Maugeri had come from when he came in with the first box, or where he went to

(Testimony of Benedict Poceroba.)

get the second box which he brought into the [52] cabin. He was gone a very short while after bringing the first box in, and then returning with the second box. I would say he was gone maybe five minutes in getting the second box.

The can which has just been removed from one of the pieces of luggage and which has just been marked Defendant's Exhibit A For Identification is what is referred to as a 5-tael can. I observe the tape around the can, which is a seal.

“Q. Well, now, while Mr. Maugeri was in the house that evening, Saturday evening, after he had brought these two cartons in, at the time he was in the house for about five minutes or so, was that about the length of time he was there?

A. After bringing the second box.

Q. After bringing the second box, yes.

A. Yes.

Q. About five minutes?

A. Enough time to have a drink.

Q. You didn't see those cans and those two cartons during that time?

A. While Mr. Maugeri was there?

Q. Yes, you did not see them during that time?

A. No, sir.

Q. But after Mr. Maugeri had left you observed Barri and Tocco weighing and wrapping cans up, is that right?      A. That is right.

Q. Are these the cans? They were cans similar to this Exhibit, here?      A. Yes, that is right.

Q. And cans in this condition?

(Testimony of Benedict Pocoroba.)

A. That is right.

Q. Just like this appears, without any writing or anything appearing on the face or the side of the can?

A. That is right.

Q. Just plain cans?

A. Plain cans like that.

Q. All taped up? A. Taped up.

Q. Sealed up? A. Sealed up.

Q. And these were being wrapped in paper, is that right?

A. Brown paper. [53]

Q. By Barri and Tocco? A. That is right.

Q. But after Maugeri had left and not while Maugeri was in the house?

A. That is right.

Q. You mentioned something yesterday in your testimony about—you sort of said quickly at the end of one of your sentences, you were saying there were some traces of opium in the boxes or something.

A. That is right.

Q. That is what you said? A. Yes, sir.

Q. What did you mean by that?

A. As you see, the cans at times leak and naturally the opium sticks to the box.

Q. Where were these traces found?

A. At the bottom of the box.

Q. At the bottom of the box?

A. That is right.

Q. But that was after Mr. Maugeri had left and after the cans were taken out of the cartons and wrapped, isn't that true?

A. That is right.

Q. And that was probably not found until sev-

(Testimony of Benedict Pocoroba.)

eral days later, after you came back with the agents to your house or cabin and turned the cartons over to the agents? A. That is right.

Q. Early in the morning the next day?

A. Yes.

Q. They were just little specks, you might say?

A. Just a small coagulation of opium.

Q. Specks?

A. I wouldn't say specks; they probably wouldn't be noticeable to the average person. To the uninitiated it might look like tar or anything.

Q. An agent could find it only by making a minute inspection of the boxes?

A. No, they were plainly visible; I believe you can see them now, you can see them yet.

Q. You can still see them in there?

A. I imagine if you look, unless the chemist scratched them off (witness inspects cartons). [54]

Q. Is it still in there?

A. Yes, there is a little bit there.

Q. You mean that stuff that looks like tar?

A. That is right.

Q. And the stuff at the bottom, here, that looks like tar, that black stuff?

A. Yes, the black stuff; see, there is a good chunk here.

Mr. Abrams: May I offer these boxes to the jury for their inspection?

Mr. Hennessy: No objection.

The Court: All right, pass them around to the jury.

(Testimony of Benedict Poceroba.)

(The boxes were passed to the jury for inspection.)”

The witness testified further: On this Saturday night that Maugeri brought these two cartons into my cabin and gave them to Tocco, who placed them on the floor, I knew what was inside these boxes.

“Q. You had not seen what was in the boxes?

A. I had not seen, but I knew it.

Q. You knew what was in the boxes?

A. Yes.

Q. How did you know that?

A. Because Barri told me he had come there and laid out \$22,000 for 100 cans of opium.

Q. You say Barri came——

A. To Santa Cruz with \$22,000, which he gave to Maugeri for the purchase of the opium, and naturally would receive the opium. All the while he had been talking about receiving the opium.

Q. In other words, you believed that Barri had come to Santa Cruz to buy opium?

A. Sure; he told me so.”

The witness testified further: I first knew about five o'clock on that Saturday night that the boxes were to be brought to my cabin that night. I did not tell any of the other agents because I was in the company of Tocco and Barri, and from five [55] o'clock that evening on I did not leave my cabin for a single minute, as it was Barri's suggestion that we all stay in, Tocco, Barri and myself, not to go out and attract attention, because he was afraid

(Testimony of Benedict Pocoroba.)

of being followed. I could not find any pretense at all to go out and notify the other agents. That may be why the other agents were not watching my place that night. At that time there were in Santa Cruz Agent Newman, of the Narcotic Bureau, Agent McGuire, of the Narcotic Bureau, Mr. Braly and Mr. Smith from the Bureau of Customs. They were all staying at the Monte Carlo Inn, which is about ten blocks from my cabin. They had been staying at various places in Santa Cruz during the months that the investigation was being conducted. Some of the agents had been in Santa Cruz before I got there in May. It was their job to watch me and my movements and to see as much as they could and to observe as much as they could in the way of narcotic violations and to catch anybody that they could catch in the act. On this particular Saturday night when I knew at least from five o'clock on that narcotics were supposed to be brought to my house no agents were around the place, and I did not get word to them. During that day I had talked to Newman on the telephone and discussed different things that were happening. However, we used to meet on the Boardwalk, or they would come by my place and talk to me, or I would call them on the telephone. We were in close touch during all these months, so from day to day they were kept informed right up to the moment of what was happening. They had previously told me about Tocco and Barri being trailed to San Francisco while riding with Maugeri, and about the grips in the car. I told the

(Testimony of Benedict Pocoroba.)

other agents that Barri was getting nervous and that he said he was being followed in San Francisco, and that things were hot and that the deal was off. I had discussed with the other agents [56] the facts that a narcotic transaction was brewing, and that it was getting close to the time when something was supposed to take place in the way of a narcotic transaction.

“Q. Yet on that Saturday or that evening the agents weren’t around your place?

A. I can’t help that.

Q. Well, you knew they weren’t there, they didn’t see Mr. Maugeri come in with these boxes?

A. Well, that is their business, not mine.

Q. They didn’t see whether anybody was out in front of your place? A. I don’t know.

Q. Or if anyone helped Mr. Maugeri bring the boxes in, or anything? Nobody saw that, to your knowledge? A. I don’t know.”

The witness testified further:

“Q. Mr. Maugeri didn’t return to your place, your cottage, that night, at all, did he?

A. I didn’t see him.

Q. Saturday night? A. I didn’t see him.

Q. You say that Tocco and Barri then wrapped these things up and put them in the suitcase and went to bed? A. Yes, that’s right.

Q. And you went to bed?

A. I went to bed before them.

Q. What time did you go to bed?

A. Around one o’clock.

(Testimony of Benedict Poceroba.)

Q. In the morning?           A. In the morning.

Q. You went to bed first?       A. That's right.

Q. Did you fall asleep?       A. No, I didn't."

The witness testified further: I had taken my clothes completely off and I had my pajamas on. I was in bed in the same room in which they were working. I did not go to sleep until after Tocco left, about 3:30.

"Q. Did you have any refreshments before you went to sleep that night?

A. Oh, we had a couple of drinks with [57] Tocco; Barri doesn't drink.

Q. But you and Tocco had some drinks?

A. A couple of drinks.

Q. How many?           A. A couple.

Q. What did you drink?

A. Whisky and lime ricky."

The witness testified further: I did not drink any sherry wine that night. It is not a fact I consumed a whole bottle of sherry wine by myself. When I retired about one o'clock I was not feeling the effects of liquor. I was able to simulate sleep without Tocco and Berri noticing it. That is very easy, there was nothing hard about it. The bed in which they slept was in the same room, and not very far from my bed. They did not suspect that I was awake.

"Q. At three o'clock in the morning, or three-thirty, you say somebody knocked at the door?

A. Yes.

Q. Was it dark outside?       A. Sure.



(Testimony of Benedict Pocoroba.)

Q. Was it dark inside?

A. Yes; the lights were out.

Q. They were not put on? A. No.

Q. Tocco left? A. Tocco left.

Q. Was Barri still asleep?

A. No, he was not.

Q. He was awake? A. Yes, he woke up.

Q. Said nothing?

A. Yes. He said, 'Be careful.'

Q. 'Be careful.' Somebody had knocked at the door? A. That's right.

Q. Did the person who knocked at the door come into the place? A. No, he didn't.

Q. All you heard was a knock?

A. And a voice.

Q. And a voice? A. Yes.

Q. What did the voice say?

A. 'Get your grips; let's go.'

Q. 'Get your grips; let's go'? A. Yes.

Q. That is all? A. That is all. [58]

Q. And with that Tocco took the grips and walked out? A. Yes.

Q. Rather quickly?

A. Yes; just took time enough to put his shoes on, tie them up and go out.

Q. And Tocco carried the grips out of the cabin?

A. Yes.

Q. All you could see or hear at that particular time, three-thirty Sunday morning, around three-thirty, was a knock on the door in darkness—dark-

(Testimony of Benedict Pocoroba.)

ness both inside and out, a knock on the door, a voice saying, 'Get your grips; let's go'; Tocco took the grips and left the house, or your cottage?

A. That's right.

Q. That is all you saw and heard?

A. That's right.

Q. At that time?                   A. That's right.

Q. At that particular time, to your knowledge, were any of the agents who were working in cooperation with you down there in or about your house?

A. I don't know.

Q. Were they in your house?

A. No, they weren't.

Q. No agents were in your house?                   A. No.

Q. To your knowledge they were not outside either, were they?                   A. I don't know.

Q. In the immediate environs?

A. I don't know.

Q. Well, to your knowledge?

A. I don't know. I was inside.

Q. Well, you found out afterward they weren't there?                   A. That's right.

Q. Afterwards you found out the agents were not there?                   A. That's right.

Q. They were not there that night, they were not there that morning?                   A. That's right.

Q. Nobody was there to observe who was in front of the house or who was there at that time; there was nobody there to observe it?

A. That's right. [59]

(Testimony of Benedict Poceroba.)

Q. Neither you nor the agents observed what Tocco did from the time he left your house at three-thirty in the morning there? A. Right.

Q. None of the agents or yourself observed his movements or who he was with or where he had gone after he left your house with those grips at three-thirty in the morning on Sunday?

A. That's right.

Q. That would be Sunday, August——

A. 13th.

Q. 13th. You said you went to sleep then, is that it? A. Yes.

Q. Did you really go to sleep then?

A. Yes.

Q. You say you fell asleep then? A. Yes.

Q. How long did you sleep?

A. We got up about eight-thirty.

Q. You and Barri? A. Joe Barri.

Q. Rose at eight-thirty? A. Yes.

Q. What did you do then?

A. We dressed, we shaved, and we had breakfast.

Q. At home? A. Yes.

Q. Then what did you do?

A. Then we went out for a walk.

Q. Then you went out for a walk? A. Yes.

Q. You and Barri? A. Yes.

Q. Where did you go? A. Around——

Q. The beach?

A. No, not on the Boardwalk but around the back of the cabins.

(Testimony of Benedict Pocoroba.)

Q. About two or three blocks?

A. Longer than that.

Q. How long were you out of your cottage?

A. I would say maybe an hour, maybe an hour and a half.

Q. Did you stop in any place?           A. No.

Q. Didn't go in any place?           A. No.

Q. Then you came back to the cabin?

A. Yes.

Q. About nine-thirty?

A. No; it must have been later than that. [60]

Q. A little later?           A. Later."

The witness testified further: Joe Barri had a bus time-table and he consulted the bus timetable and expressed the idea of going to the bus station, so he finished packing his Gladstone bag and we got a taxicab and went to the bus station. I left him at the bus station. Barri was not observed by any of the other agents leaving the house with me and he was not observed by me or any of the agents at all after arriving at the bus station. Neither myself nor the other agents know where Barri went, after I left him at the bus station. Barri was named in the indictment in this case but as far as I know he is still a fugitive. After leaving Barri at the bus depot I went to the Arcade and got a telephone booth and called up the agents at the Monte Carlo Inn. Nobody was home at the time. It was just about ten or fifteen minutes to eleven. I took a taxicab and went to the Casino, thinking that I would go along the Boardwalk and possibly meet some of the agents.

(Testimony of Benedict Pocoroba.)

As I got out of the taxicab I saw Maugeri coming down the hill from his house with some visitors from San Francisco. I stopped and talked to Maugeri and we walked together from the Casino to Maugeri's concession. I stood there a short while and then I left and called the Monte Carlo Inn again and got in touch with Agent Newman. I told him to pick me up along the road to Santa Cruz from the beach, and Newman, Smith, McGuire and Braly did. I then told them what had happened, and we decided to get in touch with Mr. Manning, so we drove to Los Gatos, got in touch with Mr. Manning, and made an appointment to meet at San Jose. When I finally got Agent Newman on the telephone it must have been around 12:30 or twenty-five minutes to one, and I think it took him maybe ten or fifteen minutes to meet me. If Mr. Newman testified in effect it was about 1:30, I wouldn't know. This is my version of [61] the thing, this is what I remember. There was no discussion between the agents about all the happenings on Saturday night and Sunday morning, and the fact of the agents not being around to see what was happening and to catch the people who were obviously committing a violation and for whom we were looking. Nobody was criticized and nobody criticized anyone else. Nobody was angry at anyone; just thought nothing of it, just one of those things. That is also true with Mr. Manning, my supervisor. He recommended me for a promotion, which I got, following the arrest in this case. There is in the narcotic division a promotion system based upon

(Testimony of Benedict Pocaroba.)

merits given to the agents. There is a specification on each case he succeeds in and his promotion and advancement depend upon that. The manner in which a case is investigated and the success of his work are considered. Although I was promoted following my work in this case I received no advance in pay, because I was already at the top of my class and could not be advanced in pay any more.

The Court: Well, Mr. Abrams, is it necessary to go into this?

Mr. Abrams: I am showing motive, your Honor.

The Court: You are covering the same ground over and over again.

Mr. Abrams: Q. Anyway, you were promoted?

A. That's right.

Q. Naturally, you are seeking promotion and advancement all the time in your work?

A. Why, surely.

Q. And you are anxious to make these cases for that promotion?

A. Well, not anxious to, but, naturally, if I get paid to do a certain type of work I want to do it right.

Q. Surely.

A. Because if I don't, naturally, I will be criticized or demoted, because there are such things as [62] demotions, too.

Q. Yes, but you are more apt to get a promotion and advancement and increase in pay in your work if successful than if it is unsuccessful?

A. That's right."

(Testimony of Benedict Poceroba.)

The witness testified further: After meeting Mr. Manning in San Jose and discussing the situation with him we then went to Oakland, looking for Tocco, and anybody else that might be with him. I returned to Santa Cruz early on the morning of Monday, August 14th. I next saw Mr. Maugeri a couple of days later, on August 16th, which was the day that Tocco was arrested in the East. Following Tocco's arrest in the East Maugeri was arrested here in Santa Cruz. I did not participate in the arrest, but I did see Maugeri a short time before his arrest on the Boardwalk, and I had a conversation with him at that time.

“Q. And did you ask Mr. Maugeri to procure some narcotics for you?           A. I did.

Q. How much did you ask him to procure for you?

A. I told him I was going home and I would like to take about ten cans with me.

Q. About ten cans?           A. Yes.

Q. And did he get them for you?

A. He said——

Q. I asked you a question.           A. He said——

Q. I didn't ask you what was said. Did he get them for you?           A. No, he didn't.

Q. He did not get them for you?           A. No.

Q. Did he ever get you any narcotics?

A. No, he never did.

Q. Did he ever hand you any narcotics?

A. No, he never did.

(Testimony of Benedict Pocoroba.)

Q. Did he ever take any money from you for narcotics?      A. No, sir.

Q. Did Mr. Maugeri—did you ever see Mr. Maugeri give anyone any money for narcotics?

A. No. [63]

Q. Did you ever see Mr. Maugeri give anyone any narcotics?      A. Outside of the boxes.

Q. Outside of bringing in these two boxes at your house that night?      A. That is right.

Q. Did you ever see Mr. Maugeri ever take any money from anyone, or give any money to anyone for narcotics?      A. No, sir.

Q. You had no arrangements with Mr. Maugeri, yourself, for buying narcotics, did you?

A. No.

Q. The only discussions you had ever had with Mr. Maugeri about narcotics was what you talked about today, and yesterday, on direct and cross-examination, here, about conversations that you and Mr. Maugeri engaged in pertaining to narcotics?

A. That is right.

Q. Is that right?

A. Yes; outside of the last conversation on the 16th.

Q. That we are just talking about now?

A. That is right."

#### Redirect Examination

The conversation that I had with Maugeri on August 16th in which I asked him to get some opium took place at his concession on the Boardwalk at Santa Cruz, California, at around four o'clock. No



(Testimony of Benedict Pocoroba.)

one was present outside of Mr. Maugeri. I told him I was going home and I would like to take ten cans of opium with me, and Maugeri said, "It is not my policy to do that kind of a business, but I will do it for you, but it will take about a week before I can get it." I saw Maugeri on Sunday, August 13, 1944, coming from his house at about 11:30 in the morning. The conversation that I had with Joe Barri in which he mentioned about coming to Santa Cruz to get opium, took place on the night he came to my cottage, August 10, 1944.

"Q. And what was the conversation with Barri on that [64] subject?

Mr. Abrams: Well, just a moment——

Mr. Hennessy: You brought it out on cross-examination.

Mr. Abrams: I don't think I did; he may have volunteered it, whatever conversation he may have had with Barri. It was not in the presence of Maugeri, and certainly wouldn't be binding on Mr. Maugeri.

Mr. Hennessy: You brought it out on cross—that is why I asked for the conversation.

Mr. Abrams: This man wouldn't be bound by——

The Court: If my recollection is correct, you did ask him some questions about some conversation that he had, and counsel is entitled to go into it. The objection is overruled.

Mr. Hennessy: He brought out——

The Court: The objection is overruled.

(Testimony of Benedict Poceroba.)

Mr. Abrams: May I have an exception, please?

The Court: Yes.

Mr. Hennessy: May the reporter read the question, your Honor?

The Court: Yes.

(Question read.)

The Witness: A. It was on the night of the 10th of August, 1944 when I went to my cottage and found Joe Barri there. He told me that he had given Sam Maugeri \$22,000 in \$1000 and \$500 bills for the purchase of 105 cans of opium, and that he had been followed by detectives in San Francisco, and had no intention of doing any business.

Q. That was on the evening of August 10th?

A. Yes, sir.

Q. Thursday night? A. Yes, sir.

Q. You stated on your cross-examination that it was August [65] 9th, which was Wednesday, that Barri had come to your cabin; that was an error, was it, it was August 10th?

A. It was August 10th, yes.

Q. Thursday?

A. Thursday, August 10th, yes.

Q. What conversation did you have with Barri about telephoning to San Francisco in order to locate Tocco?

A. As I stated, Barri told me to go to Sam Maugeri—

Mr. Abrams: Well, now, this is some more—

Mr. Hennessy: You brought it out on cross-examination.

Mr. Abrams: I am objecting to it, to any con-

(Testimony of Benedict Poceroba.)

versation with Barri, not in the presence of the defendant.

The Court: I will overrule the objection on the grounds that part of the conversation was brought out in cross-examination.

Mr. Abrams: May I have an exception, please?

The Court: Yes.

Mr. Hennessy: Q. What conversation did you have with Barri about telephoning to San Francisco to locate Tocco?

A. Barri told me to go to Sam Maugeri's concession and tell him to call somebody in San Francisco and see that Tocco got safely in Santa Cruz and to my place.

Q. When was that?

A. That was the same night, the night of the 10th.

Q. The night of the 10th?

A. That is right.

Q. Did you go to Maugeri's place?

A. I did.

Q. And what conversation did you have with Maugeri? The same night, was it?

A. Yes, the same night.

Q. What conversation did you have?

A. I told Maugeri what Joe Barri had told me, and Maugeri gave me a number, which was the number of a saloon at 1371 Grant Avenue.

Q. Do you know who conducted that saloon?

A. An Italian [66] fellow by the name of Pete Scambellone.

(Testimony of Benedict Pocoroba.)

Q. Did you telephone to San Francisco?

A. I did.

Q. Did you locate Tocco?

A. No, I didn't, sir, but I left a message at the saloon to tell Tocco to come to my place as soon as he got back.

Q. And that was on Thursday evening?

A. That was Thursday evening, August 10th.

Q. And Tocco returned on the following evening, Friday evening?      A. That is right.

Q. And he went to your cabin?

A. That is right."

The witness testified further: Maugeri was not present when Tocco and Barri packed the tins of opium in brown paper and taped them with the gummed paper tape and put them in the suitcase. Tocco and Barri obtained the cans of opium that they put in the suitcases from the two boxes that Sam Maugeri delivered there, which are now marked Government's Exhibits Nos. 3 and 4 in evidence, respectively.

As a rule Maugeri drove an Oldsmobile sedan although occasionally he drove a Chevrolet coupe which belonged to his nephew, Dominic, whose last name I don't remember, and who also lived at the home of Maugeri. My purpose in speaking to Major Manning of the proposal that my son, who was an aviator in the United States Air Force, secure permission to fly to Mexico and bring some opium back was to get the source of supply. I was endeavor-

(Testimony of Benedict Pocoroba.)

ing to learn where this opium was coming from, and wanted to get at the source of supply in Mexico.

On the evening of August 12th, when Maugeri was leaving the cabin, after having deposited the two cardboard boxes there, and after having had a drink, he told Tocco that he would return at about five o'clock in the morning. The following morning at about three-thirty I heard a knock on the door and Tocco [67] opened the door. I was in bed. The door from the street led directly into the room in which I was sleeping. When Tocco opened the door I heard a man say, "Get the grips and let's go." It sounded like Maugeri's voice. I recognized it as Maugeri's voice. I have been in the Federal Narcotic Service 16 years and have been engaged principally in under-cover work. Although I have been continuously in the service of the Government during those sixteen years I have been borrowed on several occasions. On one occasion the Crime Commission in Chicago, through the United States Attorney, and Mr. Frank Lersh, who was the president of the organization, obtained my services. When I was working for them I had to take leave without pay from the Bureau of Narcotics, but I still remained on the rolls. At the end of the assignment I went back to my job. My connection with the Crime Commission in Chicago was for about a year. On another occasion I conducted an investigation for the Attorney General of New Jersey in connection with murder. On that occasion I did not take a leave, the Bureau paid my salary and the Attorney

(Testimony of Benedict Poceroba.)

General of New Jersey paid the expenses. I also worked for the National Board of Fire Underwriters for about sixteen months, at which time I took a leave of absence from the Narcotics Bureau.

#### Recross-Examination

During all these years I have acted as an under-cover agent most of the time. In the present case my work was to act in this under-cover nature and to conceal my real identity. The conversation that I had with Mr. Maugeri was that I asked him to get me ten cans of opium and to which he replied that it was not his policy to deal in small amounts, but that he would do it for me for a price of \$225 a can, and that he would do it in about a week. This was not reported to Agent McGuire or Agent Newman, because I had no chance to tell [68] them of the conversation. Maugeri stated he would do it in about a week, but the orders were to arrest him after Tocco had been arrested. I talked about it with Mr. Manning, who was on the scene at the time of the arrest, and he said that he couldn't wait a week, that Maugeri had to be arrested right away. I had no discussion with Mr. Manning about advancing the \$2250 in marked money for the 10 cans of opium so that Maugeri would at least be caught for accepting the money, because I never give money in advance to anybody. Whenever I buy dope I want the money on the line. What the other agents do when dealing with informers is their business, but I never personally give money in advance. In

(Testimony of Benedict Poceroba.)

this case I made no effort to give Mr. Maugeri the money in order to get the narcotics that I asked for. When Tocco came back from San Francisco just before that Saturday and came to my place, he brought back the three grips. Concerning my son and the Army Intelligence, I thought the stuff might be coming in from Mexico, and that it would be a good way to get to the source of supply. It was Maugeri's suggestion about my son, it was absolutely his idea, but it was my idea to get at the source of supply in Mexico.

“Q. Now, you said Mr. Maugeri left Saturday night and said, ‘I will be back at 5:00.’

A. That is right.

Q. Not 5:00 in the morning; he said he would be back at 5:00?      A. 5:00, yes.

Q. Well, Mr. Hennessy, in giving you a leading question a little while ago, said, ‘I will be back at 5:00 in the morning.’ You mean 5:00, not 5:00 in the morning?      A. 5:00, that is right.

Q. That is what he said, 5:00?      A. Yes.

Q. As a matter of fact, the knock came on the door at 3:30 in the morning?

A. That is right. [69]

Q. And you did not see the person who knocked, but you just heard a voice?      A. That is right.

Q. Which you think might have been Maugeri's voice?      A. That is right.

Q. Right.      A. That is right.”

(Testimony of Benedict Poceroba.)

#### Further Redirect Examination

The witness testified further: There wasn't any doubt in my mind that it was Maugeri's voice. The passageway leading from Beach Street to my cabin at the Miller Apartments is not wide enough to permit an automobile to be driven in there from Beach Street to the front of my apartment.

#### Further Recross Examination

The witness testified further: The letter you show me dated June 12, 1944, written in Italian, addressed to me at Santa Cruz, and showing a return address of B. Scardina, 1540 Grand Avenue, Chicago, Illinois, bearing a postmark of June 12, 1944, with airmail stamps, is a letter that I wrote and sent to my wife with instructions that she put it in the mail box in Chicago, which she did. The letter which you show me written in English is a correct translation of the letter written in Italian. The name B. Scardina is an assumed name, and the letter was intended as a decoy letter.

(The letter written in Italian and the English translation were then received in evidence and marked Defendant's Exhibit B in evidence.)

The witness testified further: The letter which you show me, dated June 27, 1944, written in Italian, and addressed to me, like the other letter is addressed, also bearing the same return address as the other letter, and bearing a postmark in Chicago, Illinois, June 28, 1944, is likewise a letter which I wrote in Italian and sent to the District Supervisor



(Testimony of Benedict Poceroba.)

of Narcot- [70] ics at Chicago, Illinois, asking him to drop it in the mail, which was done. Both these letters were written by me, sent East and were returned to me in the mail, according to this plan of mine. The translation in English of the second letter is a correct translation.

(The letter and the translation were received in evidence and marked Defendant's Exhibit C in evidence.)

The witness testified further: The mention of "paste" in the letter means opium. I wrote that letter, myself. Nobody assisted me and nobody saw the letter, except myself, or knew of its contents. The same applies to the second letter.

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### TESTIMONY OF PETER SCAMBELLONE

For the United States.

Peter Scambellone, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Peter Scambellone. I live alone in a flat at 1644 Grant Avenue, San Francisco. There are five rooms in the flat. My business address is 1371 Grant Avenue. I am in the saloon business. I know Salvatore, or Sam Maugeri. I have known him for about thirty years and have been friendly during that time. I remember an occasion on or

(Testimony of Peter Scambellone.)

about Wednesday, August 9, 1944, when Salvatore Maugeri called at my saloon. Later, Joe Tocco and Joe Barri were present in the saloon with him. I think it was August 9th. I am not sure, though, of the date. I don't know what time Maugeri came to my saloon; about three or four o'clock. I can't tell you sure. When he came in the saloon I saw him alone.

“Q. Do you know a man named Joe Barri?

A. Joe Barri? No. [71]

Q. Did you ever see a man named Joe Barri in your saloon? A. No.

Q. What about a man named Joe Dentico?

A. I see a lot of people. I don't ask nobody's name.

Q. Do you know a man named Joe Tocco?

A. Joe Tocco? Maybe I see one; I don't know sure.

Q. Did you have a conversation on that day when Salvatore Maugeri called at your saloon about suitcases? A. Yes, sir.

Q. Who were present at that conversation?

A. A lot of people was outside.

Q. Who?

A. I was outside—there were three or four outside on the sidewalk.

Q. Do you know who they were? A. No.

Q. Was Maugeri there?

A. Yes, he was there.”

The witness testified further: I see Maugeri in the courtroom. He is over there. Sam Maugeri told

(Testimony of Peter Scambellone.)

me he had a friend who had two suitcases and asked if I would let him keep them in the house until the fellow found a room. I told him, "Yes, here is the key." I gave him the key. The fellow with the taxicab was there and took the two suitcases over to my house. I did not see the suitcases there. When I went to my house later I was pretty sick and I never looked for anything. Joe Tocco did not telephone to my house that day. I have no telephone at home. He did not visit there. There were two bags. I did not see anything like U. S. Exhibit 2 For Identification, which you are showing me. There was a big bag like U. S. Exhibit 1 For Identification, which you are showing me. I don't know about the color. It was a big bag like that. The suitcase and the bag remained in my house a couple of days, I think. I don't remember when they were taken away. I did give Maugeri the key to my house, but Maugeri did not visit my house that day. I [72] received the keys back from the same fellow that took the suitcases, the taxi driver, about five minutes after.

#### Cross-Examination

Mr. Maugeri asked me if they could leave the suitcase in my place until these men found a room, which they were looking for. That is all that was said.

## TESTIMONY OF JOHN SACCOCCI

For the United States.

John Saccocci, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is John Saccocci. I live at 3248 Folsom Street. I am in the taxi business, and am affiliated with the A-1 Sedan Service, whose headquarters are at 801 Ellis Street. I have known the defendant, Salvatore Maugeri, for about 16 or 18 years. I see him here in the courtroom. I saw Maugeri about the saloon of Peter Scambellone on an occasion when he asked me to bring some suitcases to Mr. Scambellone's house. I do not remember the date that I saw him there. The suitcases were in Mr. Maugeri's Oldsmobile sedan, from where I removed them in order to take them to Mr. Scambellone's house. I took them out of the rear seat of Maugeri's car. They were light. They did not appear to have anything in them. Maugeri gave me the key to Scambellone's house and I left the bags in the hallway on the first floor. I could not identify U. S. Exhibit 1 For Identification, or U. S. Exhibit 2 For Identification as being the bags I delivered to Scambellone's house. I don't know a man by the name of Joe Tocco, nor a man by the name of Joe Barri. When Maugeri asked me to take the suitcases to Scambellone's house there were a few people about the bar but I didn't pay any attention to them. [73]

(Testimony of John Saccoci.)

Cross-Examination

When Maugeri asked me to take the suitcases to Scambellone's house I was on my way out from the lavatory. There were other people about the place, but I do not know whether Maugeri was with any of them. The suitcases appeared to be very light, empty, to me. I do not know whether there was anything in them, or not, and I did not open them.

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TESTIMONY OF BURHL B. HARWOOD,

for the United States.

Burhl B. Harwood, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Burhl B. Harwood. I live in Santa Cruz, California. I am a clerk in the Bowman-Forgey Stationery Company Store at 146 Pacific Avenue, Santa Cruz. I was employed there on August 8, 1944, in that capacity. On that day I sold a considerable amount of brown wrapping paper and brown gummed paper tape to two gentlemen, one was a kind of heavy-set fellow, sandy complexioned, and the other fellow was a short, little chunky fellow and wore a mustache. They purchased four large sheets of brown wrapping paper and one large roll of brown gummed paper tape. Government's Exhibit No. 5 in evidence appears to be a portion of the brown wrapping paper that I sold to those two

(Testimony of Burhl B. Harwood.)

men on that day. Government's Exhibit No. 6 in evidence appears to be the brown gummed paper tape that I sold to those two men on that day. I would not swear it is the same roll, but I sold a roll just like this to them. I did not make more than one sale of that brown wrapping paper that day. Immediately after they left my store I was contacted by a Federal agent who did not give me his name. He questioned me about the sale of the brown wrapping paper and the brown gummed tape to the two men. He did not ask me if I sold them any [74] brown paper or gummed paper, he merely asked what I had sold, and I told him. This was immediately after the two men had left the store.

#### Cross-Examination

I do not know the names of the two men who made the purchase. I had never seen them before. I have seen them since then around Santa Cruz, and would know them if I saw either one again. They are not in the courtroom. I know Mr. Maugeri. He was not one of those two men.

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#### TESTIMONY OF HENRY B. HAYES

for the United States.

Henry B. Hayes, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Henry B. Hayes. I live at 1080 Eddy

(Testimony of Henry B. Hayes.)

Street, San Francisco. I am a Federal Narcotics Agent and have been with the Bureau of Narcotics since 1936. On August 8, 1944, I was in Santa Cruz. On that day, at approximately 11:50 a. m., I followed Joseph Tocco and Joe Barri from 32 Main Street, the residence of Sam Maugeri, to Bowman-Forgey Stationery Store on Pacific Avenue. They were on foot, and I followed them on foot. They went into the store and talked to the clerk. I saw them looking at some paper, and I waited outside until they came out. When they came out I noticed that Barri had a package and Tocco had a package. Then I went in and identified myself to a Mr. Harwood, the clerk, and he told me they had purchased some heavy wrapping paper and a roll of gummed tape, and had looked at a postal scale, but decided it was too heavy for their use. When I came out after talking to Mr. Harwood I did not see them. Before that day I had been engaged in the surveillance of Salvatore Maugeri in Santa Cruz. I [75] went to Santa Cruz in this matter on March 2, 1944, and worked in company with Vance Newman and other Federal agents. At first we lived in a house at 29 Park Avenue, and then later moved to the Monte Carlo Inn, on Third Street, Santa Cruz. I remained in Santa Cruz continuously from March 2, 1944 until about August 13th, with the exception of intervals of three or four days at a time, when I came back to San Francisco on two or three occasions. I know Benedict Pocaroba. I met him

(Testimony of Henry B. Hayes.)

with Agent Newman at the bus station when he came to Santa Cruz. I saw him in the company of Salvatore Maugeri on many occasions, and I saw him enter the residence of Salvatore Maugeri. I saw him in the company of Salvatore Maugeri in or about Mr. Maugeri's concession on the Boardwalk, and I have seen them visiting theatres together and traveling in automobiles together. Mr. Maugeri drove an Oldsmobile, about a 1938 model. I have also seen him drive a Chevrolet coupe and a Pontiac automobile, which cars were kept in his garages.

I know a man named Joe Tocco. I first saw Tocco at 9:30 p.m. on July 9th talking to Sam Maugeri at his concession on the Boardwalk. I have also seen him in or about the residence of Salvatore Maugeri. Tocco was living at the residence of Maugeri, 32 Main Street. I have seen Tocco in the company of Benedict Pocoroga on more than one occasion. I have seen them on the beach together and I have seen them walking to Pocoroba's cabin, and I have seen them entering Maugeri's residence together. I know a man named Joe Barri. I first saw him during the afternoon of July 21st, when he was sitting on a bench in front of Maugeri's concession, talking to the defendant, Sam Maugeri. I have seen him subsequently in the company of Salvatore Maugeri. I have seen him go to picture shows with him, and I have seen them walking together. I have seen him entering and leaving the residence [76] of Salvatore Maugeri on more than one occasion.



(Testimony of Henry B. Hayes.)

On July 28th and 29th I saw Tocco and Barri at a place near Felton, a cabin. On August 3rd I rented a cabin near Felton and occupied it. It was right next to theirs. Mr. Gleason, Customs Patrol Inspector, occupied the cabin with me. At that time Tocco and Barri were occupying an adjoining cabin. The resort was known as the Bellevue Swiss Crott, just off Highway No. 9. I saw Maugeri visit them at Felton. I never saw Benedict Pocoroba visit them at Felton. They left the cottage on August 6th, which was a Sunday, in a Chevrolet coupe driven by Maugeri, the defendant, and they drove to Maugeri's house and unloaded the grips and took them into the house at Santa Cruz.

On August 9, 1944, Inspector Gleason and myself in an automobile followed Salvatore Maugeri, who was driving an Oldsmobile sedan, to San Francisco. Joe Barri and Joseph Tocco were in the car with Maugeri. We followed them all the way from Santa Cruz to San Francisco. When they arrived in San Francisco they first stopped on 24th street, right near Van Ness; that is 3212. Defendant Maugeri got out of the car and went to a building at 3212 and remained there for possibly twenty minutes, and came out and got back into the car, and then drove on into San Francisco, and stopped on Geary street between Powell and Stockton. Tocco got out of the car at that point. Inspector Gleason got out of our car also. Then I followed the defendant Maugeri. He drove away after Tocco got out. Barri was still in Maugeri's car. They drove to a point on

(Testimony of Henry B. Hayes.)

Grant Avenue, near a saloon located at 1371 Grant Avenue. It was Scambellone's saloon. Maugeri parked the car and they both got out and went into this saloon. I later saw Tocco in the vicinity of that saloon, around noon or afternoon. While Maugeri's Oldsmobile sedan was parked near the saloon on Grant Avenue I walked past the car and looked into [77] the interior of the car. I observed a tan suitcase and a handbag on the floor in the back seat. The tan suitcase was of the same appearance as Government's Exhibit No. 1 For Identification. It was a bag of about the same size and the same color. It was a black handbag that I had seen Barri with before that was in the car with the tan bag. I wouldn't say that Government's Exhibit 2 For Identification is the bag. It was a grip, like, that opens at the top; it was brown or black in color. At about 3:35 I saw the defendant Maugeri talking to a taxi driver in front of the saloon and the taxi driver drove alongside of Maugeri's car and unlocked the car and took the two suitcases out of the car and put them into the taxicab, and drove on Grant Avenue to 1644 Grant Avenue, and pulled into a driveway there and parked the car and got out with the two handbags and went up the steps and opened the door and set them inside the house, and then he drove back to the saloon, and Maugeri was still standing there. Prior to that time, about 1:30 or 1:45, Maugeri had gotten into the Oldsmobile and drove out Pacific Avenue to Van Ness, turned into Franklin, then

(Testimony of Henry B. Hayes.)

drove back to Bay Street, and back to the saloon, and parked the car at approximately the same spot it was parked in before leaving. I didn't see Mauergeri go into the flat, or apartment, where the suitcases had been left by the taxi driver, but I saw him earlier that day walking from the direction of the apartment back toward the saloon, a distance of two and one-half or three blocks. That was the apartment that was occupied by Peter Scambellone.

On that evening at about 5:30 p.m. when Mauergeri left the saloon, Agent Grady and I followed him. He left in his Oldsmobile car, he was alone, and we followed him to the Bayshore Highway. He was going south on the Bayshore Highway towards Santa Cruz. That was around six o'clock when I last saw him on the evening of August 9th. On that same evening I saw Joe Tocco [78] and Joe Barri at the saloon at 1371 Grant Avenue, and later that evening I saw Tocco at the Telenews Theatre, and still later at the Whitcomb Hotel on Market Street. Barri was with him at the Whitcomb Hotel. It was about midnight, around midnight. On the following day, Thursday, August 10, I saw Joe Tocco leave the hotel between eight and nine o'clock that morning, and take a street car, and get off at Market and Ellis. He went into the Mayflower Coffee Shop, and then later went into a bar on Stockton Street, and came out in a few minutes and got on a Stockton street car and rode to North Beach. He left the car and walked to the saloon at 1371 Grant Avenue. On that day I did not see him enter the home of Scambellone.

(Testimony of Henry B. Hayes.)

I saw Joe Barri on Thursday, August 10th. At about twelve o'clock or a little after Tocco and Barri came out of the Whitcomb Hotel and walked down to the Greyhound bus station at Fifth and Mission. Then they walked around town, and later took a street car to North Beach. Tocco walked up to 1371 Grant Avenue and Barri stood on the corner at Columbus Avenue and looked at Tocco as he was walking up Grant Avenue to 1371, which is the saloon. Barri did not accompany him to the saloon. Barri turned around and walked rapidly up Broadway, and went into a theatre and remained there for about ten minutes. He came out without any hat. He was watching behind him and looking up and down the street. Finally, he caught a street car. Agent Gleason and I followed the car in a taxicab. When Barri went into the theatre I was following him on foot. The theatre is, I think, on the west side of Broadway. Barri appeared to have observed someone. He then got on a street car and I didn't follow him any more. I saw him later that evening at the bus station at Fifth and Mission. He boarded a bus around 5:20. I believe it was the bus that left for Santa Cruz. Tocco was not with him. I did not see Tocco [79] any more that evening. I was taken ill with the 'flu and I did not participate in the investigation after the 10th. I did not return to Santa Cruz again.

#### Cross-Examination

I have been in the Bureau of Narcotics since 1936, and have had a good deal of experience with these

(Testimony of Henry B. Hayes.)

narcotic cases, and in the making of a lot of these narcotic cases, and I have dealt with what is called an informer, a person who cooperates with an agent, and assists in obtaining evidence on a person who is suspected of trafficking in narcotics and who will arrange very often to make a purchase of narcotics from one suspected of selling, and which transaction is normally witnessed or watched or observed by me and other agents. An informer usually is a person of an underworld character.

“Q. As a rule, an informer may change his name and attempts to purchase the narcotics from somebody suspected of selling, and in that way the person is caught and arrested and prosecuted?”

“Mr. Hennessy: I object to that on the ground it is incompetent, irrelevant, and immaterial.

“The Court: I will sustain the objection.

“Mr. Abrams: I will ask the one question now.

“Q. You very often in your business—I think Mr. Hennessy knows what I am leading up to; maybe that is what he is objecting to, but I don’t think he will object to this—very often, Mr. Hayes, the money is given over by the agent or the informer, by the informer, rather, to the person whom you want to obtain the narcotics from before you get the narcotics; isn’t that true?”

“Mr. Hennessy: I object to that as incompetent, irrelevant and immaterial. [80]

“The Court: I will sustain the objection.”

The witness testified further: I was in Santa Cruz on August 8th. I had been in Santa Cruz

(Testimony of Henry B. Hayes.)

from March 2nd, except at intervals of a few days at a time on one or two occasions. Mr. Pocoroba had gotten to Santa Cruz, as I recall, about May 1st. The other agents were in Santa Cruz for several months prior to Mr. Pocoroba's arrival. As I recall, we were down there about the 1st of March. While in Santa Cruz I saw a man by the name of Lagaipa. Prior to the time I got there he had a bar or a restaurant in Santa Cruz. His family was there, too. I don't know if his family is still there. During the investigation his family was living at 113 Buena Vista Avenue, Santa Cruz. He had his wife and two daughters and one boy.

On August 8th I followed Mr. Tocco and Mr. Barri to this stationery store. They left the Maugeri house at 32 Main Street at approximately 11:50 in the morning. I saw them coming out of Mr. Maugeri's house. They went to the stationery store on Pacific Avenue, Santa Cruz. I saw them looking at the packages in the store, and when they came out later they had a package. After they left the store I went in and talked with the clerk, Mr. Harwood, and I was in there for about three or four minutes, four or five, possibly, and when I came out I didn't see them. At that time I was alone there. There were no other agents with me. As far as I know, none of the agents followed Tocco and Barri when they left the stationery store to see where they went. As far as I know, and as far as the other agents know to my knowledge, we don't know where Tocco and Barri went to after they

(Testimony of Henry B. Hayes.)

left the stationery store, or where they took those packages to. I didn't see them go back to Mr. Maugeri's house. When I and the other agents arrived in Santa Cruz we first lived at 29 Park Avenue, and then moved over to the Monte Carlo Inn, which [81] is less than a block from Mr. Maugeri's house. Mr. Maugeri's house is about seven or eight blocks from the Miller Apartments, where Mr. Pocoroba was living. During the time that myself and the other agents were in Santa Cruz during the months from March to August of 1944 all of our time was devoted to this particular case. We were giving our unlimited time and attention and energy to this case at any hour of the day or night. Hours meant nothing. We had no phone at 29 Park Avenue. There was a phone in the lobby of the Monte Carlo Inn. Agent Newman and Inspector Braly were at the Monte Carlo Inn sometime before I went to the Monte Carlo Inn. I do not recall the time I went there, but I think I went there sometime in the latter part of June, and remained there until August. During the time I was there with the other agents we would meet Mr. Pocoroba every two or three days by appointment made by telephone. We would meet him and he would let us know what was going on, as far as he knew. While in Santa Cruz with the other agents an important part of our duty was to keep Tocco and Pocoroba and Barri and Lagaipa and Mr. Maugeri under surveillance. We followed them and observed them as much as we could. Following out

(Testimony of Henry B. Hayes.)

that plan, and while carrying out our duties we followed Mr. Tocco and Mr. Barri and Mr. Maugeri in Mr. Maugeri's car to San Francisco on August 9th. We left Santa Cruz about nine o'clock in the morning of that day, and on arriving in San Francisco the first stop that was made by Mr. Maugeri's car was some place on 24th Street, near Van Ness South, where he stopped at a sort of warehouse, an olive oil place. Maugeri went in alone, and the other two men stayed in the car. Maugeri came out in about twenty minutes and drove to Geary and Powell Streets. Tocco got out of the car there and went some place. I do not know where he went. Inspectors Gleason and Braly followed him. Maugeri then left without Tocco and [82] drove to North Beach and parked his car on Grant Avenue just across Green Street. Maugeri got out of the car and Barri got out, too. They both went into this bar. I did not see Barri come out again. I was not there all the time. I went to lunch and made two or three phone calls during the day from there. About an hour or so after they had parked the car I walked by the car and looked in. It was a sedan. I could easily see the suitcases by looking through the window. They were in the back seat, on the floor. That sedan has a trunk for luggage, a closed compartment. Maugeri drove out to the vicinity of Pacific and Van Ness Avenue at around 1:30 or 1:45. He did not stop there. He drove out Pacific Street to Van Ness Avenue at about 1:45 or



(Testimony of Henry B. Hayes.)

so. During that day I did not see him drive to Pacific and Sansome. I was not watching him all the time. I had lunch, and then I had two or three phone calls. He could have driven down around Pacific and Sansome Streets during that day without being followed by me, or being noticed by me. At about 5:30 in the afternoon he left the saloon on Grant Avenue and drove out Van Ness to Army, and over Army to Bayshore. He didn't make any stops there. During the day I did not see him drive out to Army Street and stop. I was not watching him all the time. There were several agents there; we split up. I did not see him go into a restaurant to eat, but I did see him leaving San Francisco for Santa Cruz alone between five and six o'clock that night. I saw Barri take the bus back to Santa Cruz the next day, August 10th.

#### Redirect Examination

When I saw Mr. Tocco and Mr. Barri leaving the cabin at the resort near Felton I saw them load their baggage into the automobile. Tocco had a tan bag that resembled Government's Exhibit 1 for Identification, and a blue bag that resembled [83] Government's Exhibit 2 for Identification. Barri had a bag about the size of Government's Exhibit 2 for Identification, but it was a black bag and appeared to be leather.

## TESTIMONY OF JESS BRALY

For the United States.

Jess Braly, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Jess Braly. I reside in Yuma, Arizona. I am a Customs patrol inspector, and have been so for about fourteen months. I was assigned to conduct a surveillance of certain persons in the Santa Cruz area in May of this year. I arrived in Santa Cruz on May 5, 1944, and lived the big part of the time at the Monte Carlo Inn. I know the defendant Salvatore Maugeri, and saw him for the first time about May 6th of this year at Santa Cruz, on the Boardwalk, at his concession. I know Benedict Pocoroba. I saw him in Santa Cruz. I saw him in company with Salvatore Maugeri on numerous occasions on the Boardwalk, in and out of Mr. Maugeri's house, in the car with him, and going to the show. I know Joe Tocco. I saw him for the first time about July 9th. I saw him coming out of Mr. Maugeri's house. I saw Joe Tocco in the company of Maugeri frequently thereafter, going in and out of the house, and at his place of business on the Boardwalk. I saw Tocco and Maugeri in the company of Pocoroba around the concession several times. I know a man named Joe Barri. I first saw him on July 21st at Santa Cruz. He was on the Boardwalk with Joe Tocco. I have seen him in the company of Salvatore Maugeri around the Boardwalk and in and out of Mr. Mau-

(Testimony of Jess Braly.)

geri's house; I have seen them in the car of Mr. Maugeri frequently. I saw Tocco and Barri up at Felton. I was not there [84] the day they moved out and returned to Santa Cruz, but I have seen Mr. Maugeri there on one occasion at the cabin of Tocco and Barri while they were also present. I followed Maugeri when he came to San Francisco on August 9th. I was with Agent Vance Newman, the Federal narcotic agent, in an automobile. Maugeri was driving a gray Oldsmobile and Joe Barri was in the front seat with him, and Joe Tocco was in the back seat. We followed them to San Francisco. They stopped their car at 3212 Twenty-fourth Street. Mr. Maugeri got out of the car, went in the building there for about thirty minutes, then they came in to San Francisco to the intersection of Geary and Powell Streets. Joe Tocco got out of the car, and I also got out and followed him from there on. He went into the Santa Fe ticket office and remained in there for about twenty-five minutes. After he left there he went up Stockton Street and stopped in a cafe, got himself some lunch, and then got on a street car and went to within a block of 1371 Grant Avenue. He got off the street car and walked to that address. That is Scambellone's saloon. I saw Maugeri and Barri in or about the saloon while Tocco was there. I saw Maugeri's gray Oldsmobile sedan parked across the street from the saloon. I looked into the sedan while they were in the saloon and observed a large brown suitcase

(Testimony of Jess Braly.)

in the car that looked like Government's Exhibit 1 For Identification. I did not see any other luggage. The large tan or brown suitcase was sitting in the back of the car, in front of the back seat. About three o'clock in the afternoon I observed a taxicab come up and stop by the side of Maugeri's car, and the driver of this taxicab removed some luggage into the taxi. I could see the tan suitcase. I couldn't identify it. I could see he was removing some kind of luggage, but I couldn't say just what it was. He went up the street in the direction of [85] 1644 Grant Avenue. I tried to follow him, but we lost him. By the time we turned around we didn't see where he went. I was with Agent Newman. I did not see Maugeri at that time, nor did I see Barri or Tocco at that time. On the following day, August 10th, I saw Joe Tocco in the vicinity of the saloon. I was with Agent Newman. I did not follow him. I did not see Barri. On the following day, Friday, the 11th of August, I did not see Tocco. I returned to Santa Cruz a little afternoon on Friday, August 11. I was in Santa Cruz all day Saturday and Sunday. I saw Tocco and Barri on Saturday, August 12th, on the Boardwalk, in Santa Cruz, about eleven o'clock in the morning. I saw Maugeri on Saturday at his concession in the morning, and I saw him that evening again, late in the evening of Saturday, August 12, 1944. The last time in the evening that I saw him at his concession was about ten p.m. The following day I went to the Oakland Mole and assisted the other agents in cov-

(Testimony of Jess Braly.)

ering some transcontinental trains. I returned to Santa Cruz early on the morning of August 14th. I arrived there at about 1:30 a.m. on Monday morning, August 14th, and went directly to Agent Pocoroba's cabin at the Miller Apartments. Agent Newman, Narcotic Agents McGuire and Pocoroba, and Customs Agent Earl Smith were with me. We went there to Pocoroba's cabin to get some boxes that were in Pocoroba's cabin, and some wrapping paper, some scraps of paper. We got them. Government's Exhibits 3 and 4 in evidence are the boxes that we got in Pocoroba's cabin about one o'clock in the morning of Monday, August 14th, 1944. They were taken and locked in the compartment of Agent McGuire's car. Government's Exhibit No. 5 in evidence is the wrapping paper that we found in Pocoroba's cabin on that morning. It was taken and placed with the boxes in the car of Agent McGuire. Government's Exhibit No. 6 in evidence is the [86] brown paper tape that we found in Pocoroba's cabin, and it was delivered to Agent McGuire. I then returned to San Francisco on Monday, August 14th, and that night I left for Chicago by plane. I was covering a different station than Agent Newman and did not participate in the arrest of Joe Tocco.

#### Cross-Examination

I came here from Arizona just to work on this case. I arrived in Santa Cruz about May 5th and remained in Santa Cruz with the other agents until

(Testimony of Jess Braly.)

I left Santa Cruz on August 14th for San Francisco and Chicago, with the exception of the time that I was in San Francisco around August 9th for a couple of days. Outside of that I was in Santa Cruz, except that on June 5th I was called to Los Angeles to attend Federal court, and I came back June 10th. During all this time the other agents and myself were detailed to watch the movements of Mr. Pocoroba, Mr. Lagaipa, Mr. Tocco, Mr. Barri, and Mr. Maugeri, and anyone else they might contact or be associated with. We agents were in constant touch with Mr. Pocoroba, either in person or by telephone, to have him report as to what was going on, and what would be coming along.

On Saturday, August 12th, and Sunday, August 13th, I was in Santa Cruz. Earl Smith, Customs Agent, and Narcotics Agent McGuire, and Agent Newman were also there. There were five of us with Pocoroba. We were staying at the Monte Carlo Inn. During Saturday, August 12th, and on that night, and during the day and night of Sunday, August 13th, we agents were actively engaged in this work in Santa Cruz, both day and night. During those two days, Saturday and Sunday, I saw Tocco and Maugeri on the Boardwalk. I did not see Barri. I don't remember seeing Pocoroba. I had Mr. Maugeri under surveillance on those two days. I would not say we were watching Mr. Pocoroba's cottage in the Miller Court continuously, but we had Mr. Pocoroba's place [87] under surveillance

(Testimony of Jess Braly.)

during these weeks down there in Santa Cruz, as well as Mr. Maugeri's house. In fact, any place that might have been visited and frequented by these men, or where they might have lived. Between the hours of six p.m. and twelve midnight on Saturday, August 12th, I and the other agents were around the Boardwalk I imagine, part of the time. I couldn't say just exactly where we were, but approximately in the vicinity of the Boardwalk. We were around on the beach probably. We were in Santa Cruz. We have been around the Boardwalk. We may have been around Maugeri's house. We went by there several times.

“Q. You might have been around Pocoroba's cabin?      A. No.

Q. Any particular reason why you weren't there?      A. Yes.

Q. There was some reason why you didn't go around Pocoroba's cabin?

A. There is a reason, yes.

Q. On this particular night?      A. Yes, sir.

Q. You were there on the other nights, weren't you?      A. Yes, that is correct.

Q. On this particular night, August 12, neither you or the other agents were in the vicinity of Pocoroba's cabin?

A. We might have been around there a time or two, but we didn't stay around there.

Q. You didn't stay around or keep it under surveillance?      A. No, sir.

(Testimony of Jess Braly.)

Q. Neither the following Sunday morning?

A. No, sir.

Q. In the early hours of Sunday morning?

A. No, sir.

Q. Where were you and the other agents from twelve o'clock midnight of Saturday, August 12, to noon or one o'clock of August 13, the afternoon of August 13, Sunday?

A. Well, I imagine from midnight to about seven in the morn- [88] ing we were in bed.

Q. From midnight to when?

A. To seven o'clock the next morning.

Q. You think you were in bed sleeping?

A. At the Monte Carlo Inn.

Q. And then where did you go after seven o'clock?

A. Well, we probably had breakfast.

Q. Don't you know? Don't you remember?

A. Yes, I remember we had breakfast. Yes, we went to breakfast, and then we went to the Boardwalk.

Q. That early in the morning?

A. After we had breakfast.

Q. Did you stay on the Boardwalk? How long did you stay on the Boardwalk?

A. Not very long.

Q. Where else were you up to noon time?

A. Uptown for a short while and back to the beach, to the Boardwalk.

Q. Around Maugeri's house?



(Testimony of Jess Braly.)

A. We went by Maugeri's house several times.

Q. Around the Miller cabins?

A. Passed by.

Q. Around Mr. Pocoroba's cabin?

A. Passed by there.

Q. Do you know when?

A. That morning I would say we passed by there  
a time or two.

Q. Around noon time?

A. Shortly before noon.

Mr. Abrams: That is all.

#### Redirect Examination

Mr. Hennessy: Q. You said you had a reason  
for not going near Pocoroba's cabin on Saturday,  
August 12, 1944. A. Yes, sir.

Q. What was the reason?

Mr. Abrams: I object to that as being incom-  
petent, irrelevant, and immaterial; I didn't ask for  
the reason.

Mr. Hennessy: I think I have a right to show  
why he didn't. [89]

Mr. Abrams: His opinion would be a matter of  
opinion and conclusion.

The Court: Oh, I think in the interest of justice,  
having opened up the subject and leaving it in  
midair, the facts should be brought out. I will  
overrule the objection.

Mr. Abrams: Exception, your Honor.

The Court: All right, exception noted.

Mr. Hennessy: Q. What was the reason?

(Testimony of Jess Braly.)

A. Agent Pocoroba had advised us that Barri and Tocco were staying at his cabin and that Joe Barri was very frightened, he was afraid the law was following him, so for that reason we kind of gave his cabin a wide berth.

Mr. Hennessy: That is all.

#### Recross Examination

Mr. Abrams: Q. Pocoroba told you that?

A. Yes.

Q. What? A. Yes, he did.

Q. That Barri was frightened and that is the reason why you stayed away from that cabin?

A. That is right.

Q. Pocoroba's cabin? A. Yes, sir.

Q. You knew that Pocoroba and Tocco were staying there, didn't you; you knew that Tocco and Barri were staying at Pocoroba's cabin during that time, didn't you? A. Yes, sir.

Q. And you particularly had Tocco and Barri under surveillance all the time, isn't that right?

A. That is right.

Q. And you also were advised, were you not, that there was a transaction pending involving narcotics? A. That is right.

Q. And narcotics—you believed narcotics—withdraw the question. Narcotics which would involve Mr. Tocco and Mr. Barri, isn't that true?

A. Yes, sir.

Q. You knew that Mr. Tocco and Mr. Barri were contemplating going to New York, or one of them, anyway, going east about that [90] time?

(Testimony of Jess Braly.)

A. We thought they were.

Q. As a matter of fact, one of them went into the Santa Fe depot in San Francisco on the 9th, isn't that true?

A. That is right.

Q. And yet you didn't think it necessary, and the other agents didn't think it necessary and important to keep Mr. Pocoroba's cabin in the Miller Apartments under surveillance every moment of the day and night of August 12th and 13th?

A. No, we didn't.

Q. Well, how did you expect to catch them, or anybody, any narcotics transaction, unless you kept them under surveillance and the place, every minute of the day and night?

A. They were caught.

Q. What?

A. They were caught.

Q. Was Barri caught?

A. Tocco was caught.

Q. Tocco was caught; where, in the East?

A. That is right.

Q. Getting off the train in Chicago; isn't that right?

A. Yes, sir.

Q. Barri wasn't caught, was he? You are still looking for Barri, aren't you, that is true, isn't it?

A. That is true.

Q. And by not keeping Mr. Pocoroba's cabin under strict surveillance every minute of the day and night of August 12 and 13 you were unable to tell, even today you are unable to say who, from an actual observance, was going—who went in and out of Mr. Pocoroba's cabin on those two days, and

(Testimony of Jess Braly.)

nights, and particularly late at night on August 12th and early in the morning on August 13th, isn't that true?      A. That is true.

Q. And if other persons were there engaged in some transaction with Mr. Barri and Mr. Tocco you would be unable to observe them or their movements or to detect them, or to [91] apprehend them, isn't that right?

Mr. Hennessy: I object to all this, being argumentative.

The Court: I think all these last questions are argumentative, but you didn't object to them. I will sustain the objection.

Mr. Abrams: Q. So you do not know, neither do the other agents know whether there were any other persons with Mr. Barri or Mr. Tocco in the last hours of Saturday, August 12th or the very early hours of Sunday, August 13th, is that correct?

A. I don't know what the other agents knew.

Q. How about yourself?

A. I didn't see anything."

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## TESTIMONY OF EMMET GLEASON

For the United States.

Emmet Gleason, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Emmet Gleason. I live in Yuma, Arizona. I am a customs patrol inspector, for the

(Testimony of Emmet Gleason.)

United States Customs Service, and have been for about 13 years. I participated in the surveillance of Maugeri, Pocoroba, Barri and Tocco in Santa Cruz. The first time I saw Tocco was July 9, I believe. The first time I saw Barri was about July 21st. I saw Tocco and Barri frequently in the company of Salvatore Maugeri in Santa Cruz, California, at Mr. Maugeri's concession, and in Mr. Maugeri's automobile, and in San Francisco, about August 9th. On August 9th I participated in the surveillance of Maugeri in San Francisco part of the time. I saw him at the saloon of Scambellone on Grant Avenue, in front of the saloon. I saw his car there. I did not look into his car at any time. I saw two valises [92] taken out of the automobile. One was a yellow suitcase, a large one, and the other one was a smaller bag. Government's Exhibit No. 1 For Identification resembles the bag that I saw taken to 1644, I believe is the number, Grant Avenue. It was taken there by a taxicab driver. I returned to Santa Cruz on Friday, August 11th. I did not participate in the arrest of Mr. Maugeri on the 16th. I did not go to the Oakland Mole on Sunday with the other agents. I was called home by the sickness of my wife and relieved from the case.

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TESTIMONY OF THOMAS E. McGUIRE

For the United States.

Thomas E. McGuire, produced as a witness on

(Testimony of Thomas E. McGuire.)

behalf of the United States, having been first duly sworn, testified substantially as follows:

My Name is Thomas E. McGuire. I am a Federal narcotics agent attached to the San Francisco office of the Bureau of Narcotics. I live at 1635 Gough Street, San Francisco. I have been a narcotics agent approximately 17 years. On August 9th, 1944, I participated in the surveillance of the defendant Salvatore Maugeri here in the City of San Francisco, at Grant Avenue and Green Street. The first time I had occasion to see the defendant, he was standing in a door on Grant Avenue, 1371 Grant Avenue. Subsequently on that day I had occasion to observe Mr. Maugeri as he left the barroom and walked into a neighboring grocery store in that vicinity. He made some purchases there and left that grocery store and walked to 1644 Grant Avenue, which I later learned was the residence of Scambellone, the owner of the bar. The automobile that I had seen Mr. Maugeri riding in was parked right opposite the bar. I looked into the automobile partly at approximately five or ten minutes before I saw him at the bar- [93] room. I should judge it was about 11:30 or 11:00 o'clock on August 9th. I saw a brown suitcase, in appearance and size and description answering this one that is here, Exhibit 1 For Identification, in the automobile. It had all appearances of that bag there. I did not see anything else in the car. There might have been something else, but I didn't go that close to the car to observe. I didn't exactly see the baggage taken out of Maugeri's car,

(Testimony of Thomas E. McGuire.)

but I did see the taxi driver and the taxicab at the side of Maugeri's car and I saw the movements of the two doors being opened, and later the taxicab drove past where I was sitting. I was sitting on the curb side of the government automobile, and I wasn't in a position to actually see what took place. The taxi driver passed us going north to Grant Avenue. However, we were unable to continue the surveillance of the taxicab, due to the fact that traffic conditions didn't allow us to turn the government car around, but I did observe the other official automobile following the taxicab. I had occasion to see a man I was told was Joe Barri while observing the house at 1644 Grant Avenue on the evening of August 9th at about nine o'clock. I did see a man that I know as Joe Barri, and Joe Tocco enter those premises at 1644 Grant Avenue, which I have been told is the home of Scambellone, the owner of the bar. I saw them leave those premises that evening. After observing them in the house of Scambellone, they remained there about ten minutes, and both of those men, that is, Joe Tocco and Joe Barri, left the premises and walked through the streets. They didn't have any luggage with them. I saw Barri in the bus station on August 10th, approximately between the hours of 3:00 and 5:20; he was observed by myself and other agents at the Greyhound bus station, Fifth and Mission Streets. The agents and myself observed the defendant enter the Santa Cruz bus. I did not go to Santa Cruz on the 10th. I was in Santa Cruz on Saturday, August 12th. [94] I

(Testimony of Thomas E. McGuire.)

went down on the 11th, Friday afternoon, and reached Santa Cruz about 5:00 in the evening. I saw Sam Maugeri on August 12th, Saturday, at his concession on the Boardwalk. He was observed between the hours, I should judge, of eight o'clock and 9:30 or ten o'clock at night, Saturday. I was in Santa Cruz on Sunday morning, August 13th, and at the observation post at the Monte Carlo Inn. From that point I was able to observe anyone entering and leaving Sam Maugeri's home. Maugeri's home is one long city block or two short city blocks distant from the Monte Carlo Inn. It is on the same street. I was observing Maugeri's house on the morning of Sunday, August 13, 1944. I observed an automobile enter Sam Maugeri's driveway leading to his home at about 9:15, between 9:15 and 9:30 on that morning. The license number of the automobile was 12 H 384. It was an old Chevrolet, I should judge about 1938 or 1939, among those years. It was a Chevrolet coupe. Later on in the evening of that day I went to San Francisco, after a conference with the district supervisor. I returned to Santa Cruz on the evening of Sunday, August 13th, arriving there at approximately 1:00 a.m., between 1:00 and 2:00 o'clock on Monday morning, August 14, 1944. I was accompanied by Customs Agent Earl Smith and Mr. Braly, and Narcotics Agent Pocoroba, and Mr. Newman. We went to the City of Santa Cruz and then went to the home, or room that Mr. Pocoroba was occupying when he was living in Santa Cruz. There Mr.



(Testimony of Thomas E. McGuire.)

Pocoroba delivered to me two cartons which are here marked Government's Exhibits 3 and 4 in evidence. My initials appear on these cartons that I received from Mr. Pocoroba at two o'clock in the morning. When they were delivered into my possession, I retained them until I delivered them to the vault in the Bureau of Narcotics office. I delivered them to the custodian in the office of the Bureau of Narcotics, at 68 Post Street. Government's Exhibit 5 in evidence is wrapping paper that answers [95] the description and appearance of the wrapping paper that was delivered to me by Pocoroba. Government's Exhibit No. 6 in evidence is the type of paper that was in the boxes that Pocoroba delivered to me at that time and that I kept in my possession until I delivered to the director of the Bureau of Narcotics in San Francisco. I participated in the arrest of the defendant, Salvatore Maugeri. The arrest took place on August 16th, at about 6:00 or 6:15 in the evening, upon Mr. Maugeri's return to his home in Santa Cruz.

#### Cross-Examination

On the day that Mr. Maugeri was in San Francisco with Tocco and Barri, and while he was in his automobile, I did not follow him to all the places that he went on that day. I started the surveillance of Maugeri on August 9th here in San Francisco, and on the 11th I went to Santa Cruz, and on the 12th I was in Santa Cruz. I came in on the tail end of the case. I didn't go to Santa Cruz on the 9th. I first observed the defendant Maugeri on the 9th,

(Testimony of Thomas E. McGuire.)

here in San Francisco. The first date I went to Santa Cruz was the 11th, a Friday. On that date, the 11th, we arrived in Santa Cruz earlier in the day, but did not go to the observation post until about five o'clock in the evening. From that time I was there until Sunday morning. I left with Mr. Pocoroba and the other agents to go to Los Gatos. I wouldn't be certain about seeing Pocoroba on Friday. I believe Saturday noon was the first time I saw Mr. Pocoroba. I was at the Monte Carlo Inn on Friday evening. Mr. Newman and the other agents were with me part of the time. I did not talk to Mr. Pocoroba and I can't answer as to Mr. Newman or the other agents. I saw Mr. Pocoroba on Saturday at about one o'clock, on the Boardwalk. I was by myself. I had a talk with him for about twenty or twenty-five minutes. I don't believe I saw him any further on Saturday. I [96] saw Mr. Newman and the other agents during Saturday afternoon when I was in the observation post, and Saturday evening I was with Mr. Newman and the other agents, of course. I left for San Francisco on Sunday, after we met Mr. Pocoroba and had a conference with him, which was approximately 1:30. We started driving to Los Gatos about 1:30 Sunday afternoon. I should judge I saw Mr. Pocoroba about one o'clock on Sunday. I, myself, had not heard from him up to that time. I met Mr. Pocoroba on one of the side streets in Santa Cruz at around one o'clock on Sunday. I don't recall seeing Maugeri on the 11th, because I don't believe I went down to the Boardwalk except just to pass the time,

(Testimony of Thomas E. McGuire.)

but on the 12th, Saturday, I did see him. I would judge it was about after dinner; it would probably be eight o'clock, until nine-thirty or ten in the evening. He was working at his concession. It was explained to me that his daughter operated the concession next to him, and I saw the daughter—the three concessions were close together that were under observation. That is the only time I recall seeing Mr. Maugeri in Santa Cruz on Saturday night. I would say that I saw him on the evening, and it could be Friday and Saturday. I won't say definitely whether I saw him Friday night or not. I remember placing a long distance phone call on Friday night when I arrived there, and at that occasion, I was close to the concession, and I walked up there, and my memory now serves me better, that I did see him on Friday night. On Sunday morning I was keeping a watch on Maugeri's house from the observation post in the Monte Carlo Inn, from which place I could see Maugeri's house. We had glasses available should we have needed them. I had them, and I did observe through the glasses, but I didn't use them constantly. The other men may have; they were there and available if needed. This was in the morning, I should judge around 9:00 or 9:30. [97] There were three or four men available there, and I wouldn't say exactly how long I was observing the house. I say that I observed the house between eight and ten o'clock, but I wouldn't say I had any particular time in which I observed. I was available in the observation point to observe the house during those

(Testimony of Thomas E. McGuire.)

hours, from eight to ten. It was between 9:15 and 9:30 that I actually observed the car drive up to Mr. Maugeri's house. I did not observe anyone get out; it drove in through the driveway and out of my vision. I didn't say anyone was watching before eight o'clock. I said what I was doing. The other agents were available to keep watch before eight o'clock, but I wouldn't answer as to whether they were keeping a watch. We were all in a room and it was mutually agreed that this house should be kept under observation, whether I did it or the other agents. The agreement that the house should be kept under observation must have been made prior to my arrival in Santa Cruz. When I arrived there the purpose of being there was explained to me, to observe Mr. Maugeri's house. That was on Friday evening. That was one of the general duties. That was not all of our duties. That was the purpose of the observation post, though, to observe Maugeri's house, among other things, while we were there. I contacted Mr. Pocoroba away from his cabin, but I wasn't at his cabin. It was not one of my specific duties to observe Mr. Pocoroba's cabin. I don't know what the other agents' duties were, as far as the surveillance of the house was concerned. I can tell you what I was doing, counsellor. I knew from what I had been told by Mr. Pocoroba that Tocco and Barri were staying at Pocoroba's cabin. I knew that Barri and Tocco had gone to San Francisco and had gone to this bar at North Beach with Mr. Maugeri, and had stopped at the Santa Fe depot

(Testimony of Thomas E. McGuire.)

there in San Francisco. I was told personally that Tocco and Barri returned the [98] following day or two to Santa Cruz, and again went to stay, to live with Mr. Pocoroba at his cabin; what the other agents knew about it I couldn't answer.

“Q. Now, were you supposed to keep under observation Mr. Maugeri's house and Mr. Pocoroba's cabin, also?

A. That was part of the general duty. I, myself, was to observe the house and contact Mr. Pocoroba.

Q. That is right. Now, did the agents keep under observation—did you or the other agents keep under observation Friday, Saturday, and Sunday, August 11th, 12th, and 13th, Mr. Pocoroba's cabin and Mr. Maugeri's house?

A. Well, it was not necessary to keep Mr. Pocoroba's cabin under observation, counsellor, in so far as he is a government narcotics agent and capable of observing things that transpired in that cabin, but in view of the fact that Maugeri's house, we didn't have entree or the coverage of that house, we didn't have access to that house like we did to Mr. Pocoroba's house, so we concentrated on Maugeri's house on the assumption or at—now, that you are asking me, the general idea was—

Q. Well, Mr. McGuire, how many agents were down there in Santa Cruz?

A. While I was there, there were the two customs agents and Mr. Newman and myself; there were other agents at different times and places.

(Testimony of Thomas E. McGuire.)

Q. Over Friday, Saturday and Sunday, August 11th, 12th, and 13th, how many agents were there?

A. The two customs agents and Narcotics Agent Newman, and myself.

Q. How many, five? A. Well,—

Q. Including Mr. Pocoroba.

A. He was down there.

Q. That makes five. A. Yes, five agents.

Q. Between the five of you, you mean to say you were not [99] able to keep both the Pocoroba cabin and Mr. Maugeri's house under observation continuously during those three days and nights?

A. Pocoroba's house was covered by Pocoroba, himself.

Q. That is inside the house; how about the outside? A. I didn't observe the outside.

Q. Did any of the agents observe the outside?

A. Well, I can't answer, the other agents were with me all the time. As a matter of fact, if you want me to tell you what Mr. Newman told me, he said he hadn't seen—

Q. No, stick to the question. Did any of the agents, to your knowledge, station themselves in or about Pocoroba's cabin in a position to observe people going in and out of Pocoroba's cabin during the day and night of Friday, Saturday, and Sunday, August 11th, 12th, and 13th?

A. I didn't do that, Counsellor.

Q. Did any other agent, to your knowledge, do it?

A. I can't answer that, I don't know.

(Testimony of Thomas E. McGuire.)

Q. You know, as a matter of fact, they were not there?

A. I wouldn't answer that directly, because Mr. Newman was not with me throughout the four days.

Q. And so far as Mr. Maugeri's house is concerned, the only observation made there was the observation you are speaking about on Sunday morning, isn't that right?

A. You mean the only thing we had seen was the car entering that Sunday morning? The house was observed for the three or four days, counsellor.

Q. Continuously?

A. I would say that while I was in the room, I observed the house.

Q. And watched from, where you were sitting in the Monte Carlo Inn?

A. Any time I was in the room I was trying to observe [100] the house. Now, whether I seen anything during that time—

Q. Well, was there an observation kept on Mr. Maugeri's house on Friday—on Saturday evening, August 12th, on through the early hours of Sunday morning, August 13th?

A. It wasn't by me, Counsellor.

Q. You didn't keep any watch?

A. I didn't.

Q. And you don't know if any other agent did, to your knowledge?

A. I couldn't answer what they did, Counsellor."

(Testimony of Thomas E. McGuire.)

Redirect Examination

The witness testified further: I saw Tocco and Barri enter and leave the apartment of Scambellone at nine o'clock on Wednesday, August 9th. I observed them for the rest of the evening. They left Scambellone's home at 1644 Grant Avenue and they boarded the streetcar and they went to the Greyhound bus station. I heard and observed them making inquiry for the bus back to Santa Cruz. That was at Fifth and Mission Streets, at approximately 9:30 at night, in my presence, and in my hearing. I heard the clerk tell them that the last bus had left. Then they left there and went to Foster's Restaurant. They had something to eat. They left there, and they went to the Telenews show on Market Street, remained in there about an hour, left there, and got into a taxicab and returned back over at the bar, Scambellone's bar, went in and had a conversation, and they left the bar, and then walked down from Scambellone's bar to the Washington Hotel, on Grant Avenue and Pine Street—Grant Avenue and Bush. They left that hotel and got into a taxicab and they went to the Whitcomb Hotel, engaged rooms, both the men engaged a room at the Whitcomb Hotel, and were roomed in their rooms, which they paid for. During most of the time I had them under observation I was joined by other agents, and at times I was by myself, but most of the time there were other [101] agents with me following them. I did not see them on the morning of Thursday, August



(Testimony of Thomas E. McGuire.)

10th; I discontinued my surveillance work the last time I saw them on Wednesday evening, when both the men were with the bellboy going to their room; I believe about 11:30 or quarter to 12:00 that night I observed Tocco come down and purchase some cigarettes, and he left and went back upstairs to his room at the Whitcomb Hotel. I should judge it was close to midnight the last I had seen of either one of the two men.

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### TESTIMONY OF VANCE NEWMAN

For the United States

Vance Newman, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Vance Newman. I reside in San Francisco. I am a Federal narcotics agent, and have been since 1937, January, I participated in the surveillance of the defendant, Sam Maugeri, at Santa Cruz, in the progress of this case. I started my work on the continuous investigation of this case on March 2, 1944. I left Santa Cruz on March 16th, and I didn't go back again until April 10th, and except for another period of four or five days I was in Santa Cruz almost constantly until August 14th. When I first went to Santa Cruz I lived at a tourist court out on Soquel Road, but along in April I went to 29 Park Avenue, and rented a house. I moved into the Monte Carlo Inn

(Testimony of Vance Newman.)

around June 10th. The Monte Carlo Inn is on Third Street, right at the junction of Main. Main Street doesn't go through Third. The Monte Carlo is on Third Street, looking right down Main Street. From the Monte Carlo Inn I was able to observe the entrance to the Maugeri yard, which was distant less than a Santa Cruz block. The Maugeri house [102] is about one building lot away from Third Street. The Monte Carlo Inn is on Third Street. Maugeri's house is on Main Street one building lot away from Third.

I know Benedict Pocoroba. I know the cabin he occupied in the Miller Apartments, Unit No. 4. That is not observable from our observation post at the Monte Carlo Inn. It was seven or eight blocks away. I met Mr. Pocoroba in Kansas City, back in the summer of 1939. He came to Santa Cruz on May 1, 1944. Thereafter I observed him frequently. I saw him in the company of Salvatore Maugeri, the defendant in this proceeding, many times. I saw him at Maugeri's beach concession many different occasions; I saw him riding in Maugeri's car with Maugeri and other members of his family; I saw him enter and leave Maugeri's house; I saw him going to the theatre with Maugeri. One occasion I saw him in the Maugeri car on my way down to the Post Office. I saw Maugeri take him to the Graystone Hotel on the evening of May 10th. They came out of Mr. Maugeri's house.

I know Joe Tocco. I first saw him to know him on July 9, 1944. I saw him on Pacific Avenue in

(Testimony of Vance Newman.)

Santa Cruz; he went into the Big Pine Pharmacy, and he went into the Pet Creamery; then he went back to 32 Main Street, Maugeri's house. I saw him in the company of Maugeri many times. I saw him going to Maugeri's house frequently. He was living in Maugeri's house at that time in Santa Cruz.

I know Joe Barri. I first saw him on July 21st on the beach right across from Maugeri's concession at Santa Cruz. I saw Joe Barri in the company of Salvatore Maugeri repeatedly. I saw him enter and leave Maugeri's house; I saw him on the beach with Maugeri, I mean on the Boardwalk. I followed the defendant and Tocco and Barri to San Francisco on August 9th. Inspector Braly was in the car with me. Customs Agent Hayes and Customs [103] Inspector Gleason were in another car. I saw them in the North Beach section. I saw Maugeri's car on Grant Avenue, in the vicinity of Grant and Green. I know where Scambellone's bar is at 1371 Grant Avenue. The car of the defendant was a short distance away from that bar. I saw Tocco and Barri in or about the bar on that day. I looked into the car that was driven by Mr. Maugeri on that day while it was parked in that neighborhood. It was shortly after noon. I observed some luggage in there. It seems to me there were at least two pieces of luggage; one of them was a large yellow piece of luggage, such as we see down there, and the other was a darker piece. I am pointing to Government's Ex-

(Testimony of Vance Newman.)

hibit No. 1 For Identification, the tan suitcase. I saw a piece of luggage that appeared similar to that in the car. It was in the back part of the car, on the floor. There was another piece of luggage, a dark piece of luggage; at least another piece. Government's Exhibit No. 2 For Identification looks very much like it. I saw luggage taken out of the car of Maugeri on that afternoon where it was parked. A taxicab driver pulled alongside and opened the door, took two pieces of luggage out, put them in the cab, and drove away. This tan suitcase was one of the pieces of luggage. I tried to follow the cab. The cab drove north on Grant Avenue. My car was parked on Grant Avenue facing south, down near the end of the block. I drove down to Green, then turned right. I tried to drive around the block but by the time I got back I couldn't see him. I did not see Tocco or Barri that evening in San Francisco, the evening of August 9th. I saw Tocco about ten minutes after five on August 10th, at Grant and Filbert Streets. I didn't see him leave San Francisco. I got back to Santa Cruz about quarter of one, 12:45 p.m. on August 11th, Friday. I saw Maugeri on Friday after I returned to Santa Cruz. I saw him at his concession once; I saw him at his concession maybe more than [104] once, but I saw him on the beach with Agent Pocoroba about ten o'clock in the evening of Friday, August 11th. I saw Maugeri on Saturday, August 12th, at the beach concession. He was there in the afternoon, and on the evening I saw him for the last time around

(Testimony of Vance Newman.)

ten o'clock in the evening. I saw Tocco in Santa Cruz on August 12th. I saw him in the morning. I saw him on the Boardwalk. I did not see Pocoroba on Saturday, August 12th. I saw Pocoroba on Sunday, August 13th. The first time I saw him was on Beach Street, shortly after one in the afternoon. He telephoned me about ten minutes of one. Pursuant to that I met him on Beach Street. Inspector Braly was with me, Narcotics Agent McGuire was with me, and Inspector Earl Smith was there, too.

“Q. Did he then tell you what had happened in the cabin?           A. Yes, sir.

Q. That night previous and on the morning—

A. Yes.

Q. —of Sunday?

Mr. Abrams: Well, now, this is hearsay.

Mr. Hennessy: Yes. I simply wanted to lead up to the arrest. However, it is all right; I will withdraw the question.”

The witness testified further: We contacted Director Manning. Mr. McGuire did the actual telephoning. We agents then went to the Oakland Mole here and made some search of trains with the District Supervisor. I returned to Santa Cruz between 1:30 and 2:00 on the morning of August 14th, Monday. Narcotics Agent McGuire, Customs Inspector Braly, Customs Agent Earl Smith, and Agent Pocoroba accompanied me. We went to Agent Pocoroba's cabin at the Miller Apartments. He had two large cardboard boxes and certain wrapping paper and tape that he turned over to us. He actu-

(Testimony of Vance Newman.)

ally handed it to Agent McGuire. The cardboard box- [105] es were on the floor of his cabin in the front room as you enter. Government's Exhibit 3 and 4 in evidence are the two cardboard boxes turned over by Agent Pocoroba. Here are my initials on each one, and the date, August 14th, and also on this one. I observed those boxes there. There were drippings of opium in both boxes. At that time Government's Exhibit 5, the brown wrapping paper, and Government's Exhibit 6, some tape, were also delivered by Pocoroba to McGuire. I then returned to San Francisco. I left Santa Cruz about quarter to eleven on August 14th and drove in to San Francisco. I left for the East on that night, Monday. I took the six o'clock plane to Chicago on the evening of August 14th, accompanied by Inspector Braly. Upon arriving in Chicago I was met at the airport by the Director of the Bureau of Narcotics in Chicago. On the morning of August 16th I went to the Chicago-Northwestern Railroad Station at Chicago, accompanied by Agent Walsh, from the office of the Bureau of Narcotics. We went there about seven o'clock in the morning. We watched the incoming trains and observed the people coming in, or getting off those trains. Those trains were coming from the West. I saw Tocco on that morning. He arrived on train No. 28, which was due in at 8:30, but it did not get in until 9:15 a.m. It came in in two sections. I saw him get off the second section of that train. That train came from San Francisco. I saw Tocco leave the

(Testimony of Vance Newman.)

second section of that train and carrying a blue cloth bag, that is Exhibit 2, and I followed him. He walked down to the main level of the station. He stood there at the place where the baggage is delivered, and about fifteen minutes later the baggage trucks were pushed up. He claimed the large yellow suitcase, which is Government's Exhibit No. 1, and when he had both pieces of luggage he called for a cab, and then Agent Walsh and I placed him under arrest. When we placed him under arrest we took possession of those two pieces of luggage, the cloth overnight bag and the tan suitcase. We went to the Chicago office of the Federal Bureau of Narcotics. I got the keys to open the suitcase from Tocco. I opened the blue bag right there in the railroad station. It was locked. Tocco gave me the key.

"Mr. Abrams: Your Honor, I should make an objection to all this testimony as to what took place in Chicago as far as the defendant Tocco was concerned, not in the presence of the defendant, or not binding upon the defendant.

Mr. Hennessey: It is part of the *res gestae*.

The Court: You say you should make an objection. I don't know whether you are objecting or not.

Mr. Abrams: Well, I am objecting. I let a lot of this go in to get the drift of it, but, of course, what he has testified so far I will ask be stricken as not binding on the defendant.

Mr. Hennessey: It is part of the *res gestae*.

(Testimony of Vance Newman.)

The Court: Well, the objection is overruled. Exception noted."

The witness testified further: I opened the small bag in the station. It was there by some freight elevators. I led him away from the place where the crowd was to a place about fifteen or twenty yards from there, in front of some elevators on the ground floor of the station. In the bag I found some cans of opium. They were wrapped in brown paper and sealed with brown paper tape. There were about twenty cans in the small blue overnight bag. I opened the tan suitcase when I got to the office of the Bureau of Narcotics. I found 75 cans of opium and found a package of opium weighing a little over eight ounces, and I found eight ounces of morphine in a sugar box in the tan suitcase. [107]

"Q. Are those things that you found contained now in those two bags?

A. Yes, with the original wrapping removed.

Q. I show you those pieces of paper and a piece of tape that is at this time in this box, and ask you whether or not you ever saw those pieces of paper and the tape before.

A. Yes. Here is my initials and the date, August 14, 1944, and Agent Walsh's initials.

Mr. Abrams: My objection, your Honor, of course, goes to this line of testimony referring to what happened in Chicago between the agents and Tocco.

The Court: What is the basis of your objection?



(Testimony of Vance Newman.)

Mr. Abrams: I made the objection before, that it is incompetent, irrelevant and immaterial and not binding upon the defendant.

The Court: Objection overruled; exception.

The Witness: Here is another piece and the date, August 14, 1944, my initials, V. N., and Agent Walsh's initials. There are other pieces in there also initialed and dated by me.

Mr. Hennessy: Q. All those short pieces of brown wrapping paper are pieces of paper that you took off the cans of opium?

A. Yes. The packages are sealed with this tape.

Q. The packages of opium? A. Yes.

Q. This brown paper, gummed paper tape?

A. The paper was wrapped around the can of opium and it was sealed by this tape. It is still stuck here, as you see.

Mr. Hennessy: I offer in evidence, may it please the Court, these pieces of short paper and tape and ask they be marked Government's Exhibit No. 7 in evidence.

Mr. Abrams: I object to that as incompetent, irrelevant [108] and immaterial and not binding upon the defendant.

The Court: Objection overruled.

Mr. Abrams: Exception.

(The paper and tape were marked U. S. Exhibit 7 in evidence.)

Mr. Hennessy: Q. You returned to San Francisco on what date, Mr. Newman?

A. I got in on the morning of August 22.

(Testimony of Vance Newman.)

Q. Did you bring those cans of opium with you?

A. Yes, I did.

Q. You marked each of the cans, did you?

A. Yes, I did.

Q. What did you do with the cans when you arrived in San Francisco?

A. I put them in the vault at our office, 68 Post Street. Later I delivered them to the chemist.

Q. You delivered them personally to the chemist? A. Yes, I did.

Q. What chemist did you deliver them to?

A. Mr. Love's office, U. S. chemist.

Q. Where is his office?

A. Empire Hotel Building, the 11th floor."

The witness testified further: I found 20 cans of opium in the blue overnight bag and 75 cans of opium in the tan suitcase. I scratched my initials and the date on each can with a nail. There was a paper bag containing eight ounces of opium, a trifle more. Those cans of opium are in the two bags at the present time, Government's Exhibit No. 1 For Identification and Government's Exhibit No. 2 For Identification, respectively. I have not examined them since I took them to the chemist.

"Q. Will you look and see if they are in there. You are taking certain cans of opium out of this overnight bag which is now Government's Exhibit No. 2 For Identification; is that correct?

A. Yes. Nineteen cans, and there is one over there. [109]

(Testimony of Vance Newman.)

Q. This can, Defendant's Exhibit A For Identification, was taken out of that dark bag?

A. I took it out the other day.

Q. Defendant's Exhibit A For Identification is one of the cans that was contained in the blue overnight bag when it was taken from the custody of Joe Tocco after his arrest?

A. Well, I don't know that it was in the blue bag, but it was one of the cans of opium that Tocco had.

Q. Is it marked?

A. This label probably covers the mark.

Q. Will you see how many cans there are in that tan suitcase?      A. Certainly.

Q. Government's Exhibit 1 For Identification.

Mr. Abrams: If he knows how many there are there, that is all right.

Mr. Hennessy: Q. Well, you said there were 75?

A. At the time, yes. There still seems to be about 75 in there.

Q. Is there a brown paper bag containing opium there?

A. No, it is not here, but there is a package in this bag; it may be in here.

Q. Let's look and see.

A. It is sealed. Shall I open it?

Q. Yes. Is this the brown paper bag that you found in the overnight bag after you arrested Tocco?      A. No, sir, in the suitcase.

Q. In the suitcase?      A. Yes.

Mr. Hennessy: I desire to offer these cans of

(Testimony of Vance Newman.)

opium, also this brown paper bag for identification and ask that they be marked Government's Exhibit No. 3.

The Court: I think we have an exhibit No. 3.

Mr. Hennessy: I wish to offer all the cans of opium, the 20 cans of opium which were found in the blue overnight bag and the 75 cans of opium which were found in the tan [110] suitcase, for identification and ask they be marked Government's Exhibit No. 3.

The Clerk: No; it will be No. 8.

Mr. Hennessy: Not in evidence; this is for identification.

The Court: Yes.

Mr. Hennessy: No. 8 For Identification.

Mr. Abrams: I object to that as incompetent, irrelevant and immaterial.

Mr. Hennessy: Also I ask that this brown paper package be marked Government's Exhibit 9 For Identification.

Mr. Abrams: Object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

(The cans of opium were marked U. S. Exhibit 8 For Identification; the brown paper bag was marked U. S. Exhibit 9 For Identification.)

Mr. Hennessy: Q. What did you do with those cans and the brown paper bag marked Government's Exhibits 8 and 9 For Identification?

A. The cans in this bag?

(Testimony of Vance Newman.)

Q. Both; the cans you found in both the bags and the brown paper bag.

A. Took them over to Mr. Love's office. He is the U. S. chemist. I gave them to Mr. Mallory.

Q. Is Mr. Mallory connected with the U. S. chemist?

A. He is an assistant chemist, I believe is his title.

Q. When did you deliver Exhibits 8 and 9 For Identification?           A. August 28, 1944."

#### Cross-Examination

The witness testified further: I was one of the agents that followed Mr. Maugeri in his car, in which were Mr. Tocco and Mr. Barri, to San Francisco on August 9th. I did not see Maugeri [111] at all times during the day. He may have gone places where I could not have seen him. I started this investigation about March 2nd. I had been in Santa Cruz before that time, but from March 2nd on, except from March 16th to April 10th, when I was away from Santa Cruz, I was down there continuously, with the exception of other periods of four or five days each, when I would come in for court or to see the District Supervisor. As well as I remember, for the period from March 16 to April 10th when I left Santa Cruz there were no other agents there during that period. After April 10th, and except for the trip that was made by Maugeri with Tocco and Barri to San Francisco on August 9th, it is my recollection that there was always somebody down there at Santa Cruz in addition to

(Testimony of Vance Newman.)

Mr. Pocoroba. I never recall more than five agents being there at one time, and when I say "agents" I am also including customs inspectors. It might be well to say officers. At the beginning of my investigation at Santa Cruz I ran across a man named Lagaipa. I saw him in Santa Cruz, and saw him with Mr. Maugeri at times. I never saw Lagaipa with Tocco. I saw Lagaipa with Mr. Pocoroba. Nobody connected with our office saw Lagaipa since the night of June 5th. I first saw Lagaipa on this investigation on March 2nd, when I went there. The last time that I, myself saw him was early in June, but he was last seen by any of our men on June 5, according to my best information. Between March 2nd and June 5th Mr. Lagaipa was seen in Santa Cruz almost daily, either by myself or the other agents. He was watched by myself or the other agents. He was under surveillance. I knew that Lagaipa had left New York, or I heard that he had left New York for the West Coast. I didn't see him come out here. I spent half a day in New York trying to find him and I couldn't, and I found he had left New York for the West Coast. He was heard of in San Francisco before [112] we heard he went to Santa Cruz. Then we heard he went to Santa Cruz. During the time that the other agents and myself were in Santa Cruz we kept Mr. Lagaipa, Mr. Tocco, Mr. Barri, and Mr. Maugeri under surveillance. We use our judgment on those things. We don't follow him around and hold him by the coattails, but the gen-

(Testimony of Vance Newman.)

eral idea and part of our duties is to keep any suspect under surveillance, anyone suspected of having anything to do with narcotics, and to have contact with them as much as possible through our undercover man, Mr. Pocoroba. We were all five working together. I had nothing to do with bringing Mr. Pocoroba out here from the East Coast to the West Coast to have him associate with these men. That is a matter that was over my head, but that was his purpose down there, the general idea. When Pocoroba arrived there Lagaipa and Maugeri were there, and later Tocco and Barri came. He was supposed to associate with them. He was supposed to find out as much as he could about what they were doing.

“Q. And as part of those duties as a narcotic agent doing undercover work, he was supposed to, if he could, to try and engage in some narcotic transaction with any or all of those men, isn't that true?

A. No, I wouldn't say that—not engage in narcotic transactions. That is a crime. He couldn't commit a crime.

Q. How long have you been an agent?

A. Since January, 1937.

Q. And you mean to say since that time your department doesn't sanction the method of an undercover agent or informed entering into narcotic transactions with somebody suspected of dealing in narcotics for the purpose of catching and apprehending them?

A. We buy narcotics, yes, sir.

(Testimony of Vance Newman.)

Q. That is what I mean; that is the common practice, isn't it?

A. That is the general practice, yes, sir.

Q. That is the way you catch most of your dealers or peddlers, [113] isn't that so?

A. I wouldn't say most of them.

Q. By catching them in a transaction, selling narcotics or having a deal on?

A. We catch peddlers by buying narcotics from them sometimes, yes, sir.

Q. Yes. Money is passed to them, which is usually marked money, isn't that right?

A. If it is Government money.

Q. And the suspect, the dealer or peddler, would hand over the narcotics?

A. That is the way a sale violation works.

Q. And that is usually done between the suspected narcotic dealer or peddler and the undercover man you have working, such as Mr. Pocaroba, an informer, if you use an informer?

Mr. Hennessy: I object to this as being incompetent, irrelevant and immaterial and not proper cross-examination.

Mr. Abrams: I think it is. I think it is highly important, and I have a right to develop it on cross-examination. Your Honor, it is all part of the work of these agents, and Mr. Newman was down there, and we have a right to go into it, because he has testified as to his activities down there.

The Court: It is not proper cross-examination and your rights are not cut off because you have



(Testimony of Vance Newman.)

already had the cross-examination of the agent Pocoroba as to just exactly what he did.

Mr. Abrams: Your Honor recalls Mr. Hennessy made an objection to this particular line of testimony on Mr. Pocoroba's cross-examination, and I said I would reserve it until some other agents take the stand who were qualified to testify.

The Court: I don't think it is proper and I don't think your rights have been invaded. I will sustain the objection. You may have an exception.

Mr. Abrams: Exception, your Honor.

The Court: Very well.

Mr. Abrams: Q. And in the case of Mr. Pocoroba, Mr. New- [114] man, if Mr. Pocoroba was able to arrange a transaction with any of these men for the purchase of narcotics he would be furnished with the money for it, isn't that true?

A. (No response.)

Mr. Abrams: Don't look to Mr. Hennessy to object to it.

The Court: Whether Mr. Hennessy objects to it or not, I assume there is an objection made.

Mr. Hennessy: I will make an objection. I consider it objectionable.

Mr. Abrams: I am asking him what happened in this particular case.

The Court: I have already sustained the objection. It is not proper cross-examination of this witness. You may have an exception.

Mr. Abrams: Exception."

The witness testified further: If we could have

(Testimony of Vance Newman.)

bought narcotics from any of these men, Barri, Tocco, Maugeri, and Lagaipa, on terms acceptable to the bureau, I suppose we would have done so. If I could have bought narcotics from any of those men and the bureau approved, I would have done so. I can't answer for the others, but for myself, under approval of the bureau I would have done so. Before going to Santa Cruz the general plan was discussed with Major Manning, my supervisor, and it was discussed among the agents many times during these months down there. We were all appraised of what we were being sent to Santa Cruz for, and what our duties would be down there. We were not always all together when these discussions took place and when Major Manning gave us instructions. We were aware of the general plan in mind in going to Santa Cruz, and whom we were to contact, and whom we were to shadow and follow, and what we were to do. We were to keep these men under [115] surveillance according to the dictates of our good judgment, which included Mr. Pocoloba, to keep him under surveillance, even though he was an agent, to watch what he was doing, and see whom he contacted, so whatever he said or testified to could be corroborated in this court. We were to do that according to the dictates of our judgment. If it could be arranged that any of the agents could make a purchase of narcotics from any of these men in Santa Cruz we would go ahead and do it, subject to proper approval.

“Q. And this would be one of the most im-

(Testimony of Vance Newman.)

portant, probably the most important phase of that work, isn't that right?

Mr. Hennessy: I object to the question as calling for the opinion and conclusion of the witness, if it pleases the Court.

The Court: I sustain the objection.

Mr. Abrams: Q. And in the case of Mr. Maugeri, following that up now, if you or any of the other agents doing your work down there, pursuing your duties, could have arranged a transaction with Mr. Maugeri whereby you could get him to deliver to you or Mr. Pocoroba or any other agent some narcotics and received marked money in exchange—if that could have been done, you would have done it?

Mr. Hennessy: I object to it as being asked and answered.

Mr. Abrams: I said generally before, and now I am applying it to Mr. Maugeri.

The Court: I think that objection is good as well as a number of other objections to it. I will sustain the objection.

Mr. Abrams: May I have an exception?

The Court: Yes. [116]

Mr. Abrams: Q. That is what you were trying to do down there?

Mr. Hennessy: The same objection.

The Court: Sustained.

Mr. Abrams: Q. When you were down there, weren't you and the other agents attempting all the time you were down there to have Mr. Maugeri de-

(Testimony of Vance Newman.)

liver some narcotics to you or to Mr. Pocoroba and receive marked money——

Mr. Hennessy: Objection. It is not proper cross-examination, and also it has been asked and answered.

The Court: I will sustain the objection.

Mr. Abrams: Exception, please.

The Court: Exception noted.”

The witness testified further: While I was in Santa Cruz I was not in constant touch with Agent Pocoroba, nor would I say I was in touch with Mr. Pocoroba as often as it was necessary for Mr. Pocoroba to contact me, either in person or by phone. The man was working under difficulties. I don't know what was in Mr. Pocoroba's mind all the time, but there may have been times he wanted to contact us but wouldn't be able to. He would have to tell you about that. If it was possible for Mr. Pocoroba to communicate with me or the other agents at any time that he had some important message for me, or some new development took place, he would do so. I wouldn't say that was done frequently; now and then, yes, sir. I mean by "now and then," that there were days when I didn't see the man. For instance, I knew he was going to San Francisco with Maugeri, and I didn't bother to follow him; I didn't bother him all that day. When Mr. Pocoroba went to Merced to visit his boy I think he was gone two or three days. I know I heard from Pocoroba and talked to him over the phone and saw him now and then, but

(Testimony of Vance Newman.)

whether it was every day or [117] every other day, I couldn't say. The agents were not always all together down there. We split up. Braly and I were together, and Hayes and Gleason. I feel quite sure I am not the only one Pocoroba talked to. I cannot answer for the other agents. I talked to him at times, yes. On August 9th, the day that Mr. Maugeri was followed in his car with Tocco and Barri to San Francisco, I didn't either see or talk to Mr. Pocoroba. I do not know if any other agent did. I don't remember if I talked to Pocoroba on the 8th. On Thursday, August 10th, I didn't talk to or see Mr. Pocoroba. If any other agent did I do not know. On Friday, August 11th, I saw and talked with Pocoroba for maybe twenty minutes.

“Q. Well, did you testify 20 or 25 minutes? You met him about 1:00 p.m. on the Boardwalk and you talked to him for about 20 or 25 minutes?”

“A. It was on the afternoon of the 11th, I may have said 25.

Q. Could it be 20 or 25 minutes?

A. It could be.

Q. Not a few minutes?

A. ‘A few’ is a relative term; 20 or 25.

Q. Yes. And did you see him, Mr. Pocoroba, from that time on until Sunday at 1:00 o'clock?

A. Yes, sir, I saw him on the evening of the 11th again, but I didn't talk to him.

Q. You saw him again on the evening; you saw him twice that day?

A. That is right.

(Testimony of Vance Newman.)

Q. That is twice on Friday?

A. That is right.

Q. Did you see him on Saturday, the next day?

A. No, sir.

Q. Then you didn't see him until Sunday, the next day at 1:00 o'clock?

A. A few minutes after 1:00, yes, sir.

Q. Now, did you or the other agents, to your knowledge, keep Mr. Maugeri's house or Mr. Pocoroba's cabin under observation Thursday, Friday, Saturday or Sunday?

A. I know I didn't, I [118] don't know about the others.

Q. What is that?

A. I know I didn't keep them under constant observation.

Q. You didn't?           A. No, sir.

Q. And you don't know about the others?

A. No, sir.

Q. You didn't notify the others to do it?

A. No, sir.

Q. Nor did they notify you?           A. No, sir."

The witness testified further: I saw Mr. Pocoroba about 1:00 o'clock on Sunday, August 13th. At that time his condition was normal, I didn't see anything wrong with it; possibly a little bit excited, but nothing like he might have been, considering what he had been through. He was not so very nervous and excited, as I say, considering what he had been through. There was no discussion or criticism

(Testimony of Vance Newman.)

about the fact no one was watching Agent Pocoroba's cabin.

“Q. Yes.

A. Absolutely not. I would not go near the place.

Q. Why?

A. Because two dope peddlers were in there.

Q. Tocco and Barri?

A. Yes, sir, they were eating and sleeping there with Agent Pocoroba and one was scared to death; I wouldn't go near the place.

Q. Tocco and Barri, whom you considered two dope peddlers, were in there? A. Yes.

Q. And you wouldn't go near the place?

A. Because we had our own man eating and sleeping in there with them.

Q. And you were depending on Pocoroba not only to sleep and eat with Barri and Tocco and find out everything about them, but you were also depending on him to catch them single handed and put them under arrest and deliver them to you five fellows for prosecution? A. Did I speak——

Q. Or was that your job down there?

A. My job was doing [119] whatever was necessary to be done.

Q. Your job was to apprehend them, wasn't it?

A. I wouldn't say that, my job was to conduct the surveillance and do whatever was to be done to enforce the laws.

Q. You have the power of arrest, don't you?

A. As far as I know.

(Testimony of Vance Newman.)

Q. You carry a gun, don't you? You have a gun on you now, don't you?

A. Not now, but one was issued.

Q. You had one down there? A. Yes.

Q. Did the other agents have guns——

Mr. Hennessy: This is not proper cross-examination. I object.

The Court: Objection sustained.

Mr. Abrams: I think I am entitled to this examination. I should not be excluded from it just because it is getting hot for the Government.

The Court: I don't see what you are getting at. I will sustain the objection.

Mr. Abrams: We are testing the credibility of the witnesses here. This all goes to the credibility of these witnesses showing a lot of conflicts and unbelievable testimony. The jury has a right to hear it all.

The Court: I sustained the objection already. You may have an exception.

Mr. Abrams: Exception.

Q. And if you could have caught Barri and Tocco red-handed, you would have done so, would you?

Mr. Hennessy: I object to that as being a hypothetical question.

The Court: Objection sustained. It is a hypothetical question; it is not proper cross-examination. [120]

Mr. Abrams: Exception, please.

The Court: You may have an exception.



(Testimony of Vance Newman.)

Mr. Abrams: Q. In other words, you and the other agents made no effort to apprehend or take into custody Tocco and Barri, is that true, at that time, on any of those days, Friday, Saturday and Sunday?

A. Yes, I made efforts to apprehend them, take them into custody on Sunday.

Q. Who? A. I did.

Q. Who did you make an effort to take into custody?

A. Tocco and Barri, both, if I could have found them.

A. After 1:00 o'clock on Sunday? A. Yes.

Q. After you missed the boat?

A. After I talked to Agent Pocoroba, yes, and after I talked to Major Manning, I tried to catch Tocco and Barri.

Q. But prior to 1:00 o'clock Sunday—

A. That is right.

Q. You made no effort to apprehend or take into custody Tocco or Barri?

A. I had nothing to arrest them for that I know about.

Q. And you made no effort to keep them under observation at Pocoroba's cabin during those days, did you?

A. I didn't watch the cabin, no, sir.

Q. What?

A. I didn't watch the cabin.

Q. Neither did the other agents?

(Testimony of Vance Newman.)

A. You will have to ask them, but I didn't want to go near that cabin.

Q. Because you were afraid, is that it?

A. I wasn't afraid for myself, for my personal safety, I was afraid I would spoil the case.

Q. You thought you would spoil the case?

A. I was afraid I might, yes.

Q. Wouldn't you be able to place Pocoroba's cabin under observation without Tocco and Barri knowing it? A. Well, they [121] were inside.

Q. Isn't that the nature of your work?

A. It is very possible I could have placed it under observation without Tocco and Barri knowing it because they were holed up in the place, but others might have known.

Q. They might have seen you all the months following these fellows around from San Francisco to Santa Cruz?

Mr. Hennessy: I object to this line of questioning.

The Court: Sustained. I sustain the last objection on the ground it is argumentative.

Mr. Abrams: Exception please.

The Court: Exception noted."

The witness testified further: At this morning's session Major Manning was sitting in one of the front seats here in court while I was testifying. I did not have occasion to look to him for guidance while I was being questioned during this morning's session. I looked over toward the counsel table, yes. I did not testify this morning that I didn't keep

(Testimony of Vance Newman.)

Pocoroba's cabin under surveillance on Saturday night, August 12th, or early Sunday morning, August 13th, because I thought that was Pocoroba's job, and that there were two dangerous narcotic peddlers in the house, there, and I didn't want to be around. That is not what I said. I said that I didn't want to go near Pocoroba's house, because I didn't want to alarm these men, that there were two peddlers at the time in Pocoroba's house, and I knew there was one of them that had been almost scared to death in San Francisco, and I didn't want to frighten him any worse.

“Q. As a matter of fact, Mr. Newman, that was your duty, and a part of the duties of a narcotic agent in a case of this kind, to shadow a suspected person and keep him under surveillance all the time? [122]

Mr. Hennessy: I object to that as argumentative and not proper cross-examination.

The Court: Sustained on the ground it is argumentative.

Mr. Abrams: Exception.”

The witness testified further: Up until these last two or three days leading into August 13th, I and the other agents kept Mr. Maugeri and Mr. Tocco and Mr. Barri and Mr. Pocoroba and Mr. Lagaipa, while he was in Santa Cruz, under observation as much as we could see, as much as we thought was necessary and practicable, yes. We did not shadow practically every movement they made, no. We did not follow them all the time. One of our men fol-

(Testimony of Vance Newman.)

lowed Tocco and Barri to the stationery store. Tocco and Barri were followed with Mr. Maugeri to San Francisco. I remember following Mr. Maugeri to San Francisco twice. I remember that personally. I did not follow Tocco and Barri to Felton. I went up there after they had already been there, but I didn't follow them. I don't remember any agent testifying here in court that he followed Tocco and Barri to Felton when they rented the cabin. I remember testifying the other day in this courtroom on the hearing of a motion in behalf of the defendant Tocco. It was last Saturday, when Mr. Gillen and Mr. McDonald, attorneys for Tocco, were questioning me.

“Q. Yes. Do you recall at that time, at that hearing, Mr. Gillen, Mr. Tocco's attorney, asked you this question and you gave the following answer:

‘Q. I will ask you this: Did Agent Pocoroba make any explanation to you, or to any other member of the Federal Narcotics Division in your presence, as to the reason why he waited from three o'clock in the morning until one o'clock in the afternoon before reporting officially to anybody in authority, or in equal author- [123] ity with him, that Tocco and Sam Maugeri had departed with 105 cans of opium from the cottage at Santa Cruz?

A. I don't remember Agent Pocoroba's exact language, but the general idea was that he intended to go ahead in an under-cover capacity, even make buys on his own, find out where the stuff came from, where Maugeri got it; in other words, he felt the

(Testimony of Vance Newman.)

investigation was still open from an under-cover viewpoint, and that he felt any arrest then would expose him as an under-cover witness. What the exact language was, I don't remember, but that was the general idea. That is what I got.'

Do you recall that being your testimony?

A. Yes. I don't recall the exact words, but substantially that.

Q. Is that the reason why you did not watch, or the other agents did not watch Pocoroba's cabin on Saturday night and Sunday morning, August 12th and 13th, or is it for the reason you gave just a little while ago on the stand and this morning?

Mr. Hennessy: I object to that on the ground it is incompetent, irrelevant, and immaterial, what the reason was. It is not proper cross-examination.

Mr. Abrams: I will submit it.

The Court: I will sustain the objection.

Mr. Abrams: Exception."

The witness testified further: On Saturday evening, August 12th, Customs Agent Earl Smith and I were in the vicinity of the Boardwalk in Santa Cruz up until shortly after ten o'clock. I was on the Boardwalk, and I was near Maugeri's concession quite a bit of the time, all the evening near Maugeri's concession on the Boardwalk, until about ten o'clock. When I left the Boardwalk about ten o'clock Maugeri was either at his concession there [124] or in the vicinity. I saw him leave the concession and go down the Boardwalk once. Then he started back to work, and he was close by, if he was not at his concession. When I left the Boardwalk at ten

(Testimony of Vance Newman.)

o'clock I do not know whether any other agents were left there watching Mr. Maugeri. I went to the Monte Carlo Inn around ten o'clock, shortly after ten o'clock, with Agent Smith. I remained there at the Monte Carlo Inn for the rest of the evening. I slept there. I don't remember what time I got up the following morning. I got up at the usual time. I am rather an early riser. I did not remain at the Monte Carlo Inn until I heard from Pocoroba at one o'clock on Sunday. I went out for breakfast and walked around a bit. That was before one o'clock. Customs Agent Earl Smith was with me. He was new on the job and I took him along with me to show him what it was all about. As well as I remember, I drove Agent Smith up to church, he wanted to go to church, early mass, and I picked him up at eleven o'clock, or shortly thereafter. Of my own knowledge, I don't know what the other agents were doing Saturday night. I saw them, but I was not with them all the time. As I explained before, we were paired off. I was with Customs Agent Smith at that time, and Agent McGuire was with Customs Inspector Braly. I don't know where they were all the time. I ran across them once in a while, but I was not with them constantly. They went to the Monte Carlo Inn Saturday evening. They did not go with me. They got there sometime during the night. We all went to bed. There were three of us in one room, and Smith went to bed in the room across the hall. We all got up at about the same time on Sunday morning. We went out for

(Testimony of Vance Newman.)

breakfast. I don't remember if we went out together. Some of the boys went to church, and then I dropped down in the vicinity of the Holy Cross church and picked up the fellows who had gone there about eleven o'clock. [125]Pocoroba is a Federal narcotics officer. I don't know his C.A.F. He has the power of arrest. As an under-cover man he would not carry a gun. I am satisfied he didn't have a gun there.

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### TESTIMONY OF GEORGE E. MALLORY,

for the United States.

George E. Mallory, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is George E. Mallory. I live in San Francisco. My business address is Room 1103 Empire Hotel Building. I am a chemist employed by the United States Treasury Department. I have been so employed over twenty-three years.

“Mr. Hennessy: Do you want to stipulate to his qualifications?”

Mr. Abrams: Yes, he is fully capable of testifying.

Mr. Hennessy: Q. In your capacity as a Government chemist, were certain cans of opium delivered to you on the 28th of August 1944?

A. Yes, sir.

(Testimony of George E. Mallory.)

Q. Would you look at those cans of opium here and see if those were the cans delivered to you?

Mr. Abrams: We will stipulate those are the cans.

Mr. Hennessy: You will stipulate they are the same cans?

Mr. Abrams: Yes.

Mr. Hennessy: Q. Referring to the cans of opium, being Government's Exhibits 8 and 9 for Identification, did you make an analysis of those cans of opium?

A. I made an analysis of all the cans in those packages.

Q. That is the tan suitcase, being Government's Exhibit No. 1 For Identification and the leather overnight bag, being Government's Exhibit No. 2 For Identification?

A. Yes, sir. [126]

Q. And what was the result of those analyses?

A. The cans contained smoking opium.

Q. Did you make an analysis of any tracings on those two cardboard containers, being Government's Exhibits 3 and 4 in evidence?

A. Yes, sir.

Q. Did you find any opium in the tracings on those containers?

A. In the bottom of both of those boxes there was smoking opium sticking all over the box.

Mr. Hennessy: That is all. Take the witness.

Mr. Abrams: No questions.

Mr. Hennessy: That is all. The Government rests.



(Testimony of George E. Mallory.)

Mr. Abrams: Mr. Mallory, would you remain a little bit, please? I may want to call you.

Mr. Mallory: Yes, sir.

Mr. Abrams: At this time, your Honor, I make the usual motion for a directed verdict.

The Court: Has the Government rested?

Mr. Hennessy: Yes.

The Court: I think you left several exhibits in abeyance.

Mr. Hennessy: Yes. I desire to offer in evidence at this time, may it please the Court, the tan suitcase, being Government's Exhibit 1 For Identification, and ask that it be marked in evidence; the cloth overnight bag heretofore marked as Government's Exhibit 2 For Identification; and also the cans of opium, being marked Government's Exhibit 8 For Identification, and the paper bag containing some opium, being marked Government's Exhibit 9 For Identification—I ask that all those exhibits be received in evidence and marked for the Government in evidence.

Mr. Abrams: I object to them as being incompetent, irrelevant and immaterial and not binding on the defendant. [127]

The Court: The objection is overruled. They will all be admitted in evidence.

Mr. Hennessy: May they be marked in evidence with the same numbers as they are marked for identification?

The Court: Yes.

(U. S. Exhibits 1, 2, 8 and 9 For Identification were received in evidence.)

(Testimony of George E. Mallory.)

Mr. Abrams: Do you close now?

Mr. Hennessy: Yes.

Mr. Abrams: I make the usual motion for a directed verdict.

The Court: Very well. The motion will be denied and an exception allowed.

Mr. Abrams: Before I make that motion—will you just hold that in abeyance? I neglected to—I want to recall Mr. Pocoroba for just a question or two on cross-examination. Do you have any objection, Mr. Hennessy?

Mr. Hennessy: No, I have no objection.

Mr. Abrams: Then I will make the motion later.

Mr. Pocoroba, will you take the stand again, please?

TESTIMONY OF BENEDICT POCOROBA,  
recalled.

Further Cross-Examination

The witness testified further: As an agent I have the power of arrest. While I was in Santa Cruz I did not have the service gun, but I had a pocket gun. On Saturday night, August 12th, at about 11:30 or so, when I testified that Mr. Maugeri carried these two cartons, Government's Exhibits 3 and 4, into my cabin at the Miller Apartments, Mr. Barri and Mr. Tocco were in the apartment. I said that Mr. Maugeri brought in one carton [128] first and handed it to Mr. Tocco, and Mr. Tocco put it on the floor, and then Mr. Maugeri

(Testimony of Benedict Pocoroba.)

went out and in a few minutes came back with the other carton and handed it to Mr. Tocco, and Mr. Tocco put that on the floor. Then we had a drink, and Maugeri left. Maugeri was holding the box like this (indicating by holding both hands under bottom of box, with box against chest). That is my best recollection of how he was holding it; one box at a time. After Mr. Maugeri had left and after Tocco and Barri had emptied the contents of these boxes, both boxes had apparently been full of these cans that are in evidence. I do not know the exact weight of one of these cans. I am not a very good judge, but I would say better than a quarter of a pound. There are 95 cans, and divided so as 40 or 50 cans were in one of these boxes it would make the box rather heavy. This suitcase is pretty heavy here. This suitcase, referring to Government's Exhibit No. 1 in evidence, which is apparently loaded with these cans, is pretty heavy. At the time Maugeri was there he had a brown leather jacket on and dark trousers, tan shoes, and a brown hat. He was not wearing gloves. I didn't have any gloves in the house. I gave them a pair of socks to use. On Monday, August 14th, when the agents returned to Santa Cruz, I turned over to the agents the boxes and wrapping paper and that other paper, there, whatever was left in my house of those things. Between Sunday morning when Barri left and until Monday when I came back to my cabin and turned these things over to the agents, to my knowledge nobody was in my cabin. We had

(Testimony of Benedict Poceroba.)

no maid service there. Everything was locked and I found it all intact, the same as when I had left. After the boxes and papers were turned over to Mr. McGuire I do not know whether an examination was made of the papers and the boxes for fingerprints. I was not present at any time when such an examination was made by the [129] chemist, and I don't know whether any such examination was made.

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TESTIMONY OF GEORGE E. MALLORY,

recalled,

Further Cross-Examination

The witness testified further: I am one of the Federal chemists. Dr. Love is in charge of my office. Dr. Love is the chemist and I am associated with him. I did all the examination work of the narcotics here in question, myself. I made no examination of Government's Exhibits 3, 4, 5, and 6, respectively, for fingerprints. I had nothing whatsoever to do with any fingerprint work. I never have since I have been in San Francisco. In the Alcohol Tax Unit there is another photograph laboratory, and those men do that work. I do not know of my own knowledge whether such an examination was made there. To my knowledge, from the carbon on the outside of those boxes I would say that such an investigation had been undertaken. That is just pure guess work on my part.

TESTIMONY OF VANCE NEWMAN,

recalled,

Further Cross-Examination

“Mr. Abrams: Q. Mr. Newman, was an examination made of Government’s Exhibits 3, 4, 5 and 6, the boxes, the paper and the wrapping paper and the Scotch tape there, for fingerprints?”

A. You mean that gummed paper tape?

Q. The gummed paper tape.

A. Yes, it was examined for fingerprints.

Q. The boxes and the——

A. The two big cardboard boxes, the wrapping paper, and the gummed tape.

Q. Yes.

A. Yes, an examination was made for fingerprints. [130]

Mr. Abrams: Thank you. That is all.

Mr. Hennessy: Q. Any fingerprints found?

A. No, sir, negative results, sir.

Mr. Hennessy: That is all.

Mr. Abrams: That is all. Thank you, Mr. Newman.

Mr. Hennessy: The Government rests, your Honor.

I suppose you want to renew your motion?

The Court: It may be deemed to have been renewed and denied and an exception noted.

Mr. Abrams: Very well; thank you, your Honor.”

## TESTIMONY OF SALVATORE MAUGERI,

the defendant.

Salvatore Maugeri, the defendant, produced as a witness in his own behalf, having been first duly sworn, testified substantially as follows:

My name is Salvatore Maugeri. They call me Sam, more so than Salvatore. Sam is short for Salvatore. I really am known as Sam Maugeri. I am 53 next birthday. I am married and have three girls and a boy; four children. The three girls are aged 10, 20 and 21. I have a boy 22, who has been in the Navy five years. He is an enlisted man in the Navy, and has been in the South Pacific for 27 months. My wife and children are here in the courtroom and have been here all through the trial. In 1935 I was convicted of the charge of conspiracy in connection with counterfeiting. As a result of that I served a term of two years in the penitentiary. I came from prison in October, 1937, and went to Santa Cruz, California, and have lived there ever since with my family. I have been engaged partly as a gardener and partly as a concessionaire. I have my nephew engaged with me in the concession. Between my nephew and myself there are three concessions, all different games. I work in [131] one and my nephew worked in the other two, and my daughter helped me. In the winter time I would do the gardening work half a day in the morning and in the summertime most of the time was spent on the Boardwalk at the concessions. The hours of work in the summertime at the concession were

(Testimony of Salvatore Maugeri.)

usually from nine, nine-thirty, ten or eleven in the morning, until late at night, depending upon the crowds. Saturday and Sunday are the better days for business. My wife has a home in Santa Cruz. Her mother died and left a home for her. That is the home we live in now. It is an old residence, about a ten-room house, two stories high. Its value is about five thousand, I guess. I wouldn't know, because I am not a real estate man. The address is 32 Main street. Before that I had a kind of home and business, both, a greenhouse. I lost that when I went to jail on the counterfeit charge in 1937; I couldn't pay up.

“Mr. Hennessy: We object—incompetent, irrelevant, and immaterial, and has no bearing.

Mr. Abrams: Well, we are showing just a little bit of background, which I believe we have a right. I am practically all through now.

The Court: All right, go ahead.”

The witness testified further: Of the automobiles mentioned in this case, the Oldsmobile belonged to my son, and I used it while he was in the service; all the family used it. The Chevrolet belongs to my nephew. It is, I believe, a 1936 car; I wouldn't say for sure. When my son came back from the South Pacific he saw the Oldsmobile run down, and he bought a little Pontiac for himself. He had a little money saved. He let me use the Oldsmobile. Living with me at the house at 32 Main Street are my brother and nephew and one Coastguardsman, who is a boarder, and my family. The Coastguardsman

(Testimony of Salvatore Maugeri.)

has been [132] there for a year or a year and a half, but my nephew and brother live there all the time since I have been at Santa Cruz, and before that here in San Francisco when I was here.

I know a man named Lagaipa. I don't recall the first time I met him, but it was in 1943 sometime. It was in the spring time, March or April; I wouldn't say. I met him on the Boardwalk in Santa Cruz.

“Q. Did he state to you his business at that time or why he was at the Boardwalk?”

“Mr. Hennessy: We object to this on the ground it is irrelevant, incompetent and immaterial and hearsay.

Mr. Abrams: I think this is very pertinent, your Honor. This man Lagaipa is in this picture, very much so. We certainly have a right to show this man's association. They brought up the association of this defendant with Tocco and Barri, and it is true that I have to bring Lagaipa into this picture myself on cross-examination, but he is in the picture, and now we have a right for this man to explain his association with these men.

Mr. Hennessy: I don't think it is important. I will withdraw the objection.

The Court: I was going to say that. Strictly speaking, it is not competent, but I will let it go.”

The witness testified further: He was looking for a business of his own, a concession in Santa Cruz. He said, “There is a lot of business here.” I said, “There is a lot of business if you know how



(Testimony of Salvatore Maugeri.)

to run it." He found a little place that was supposed to be beer and sandwiches, serving food. He bought that, because I introduced him to the company in Santa Cruz, and he bought the place, but he never opened up. I don't know why. I didn't ask him the reason. He sold it before he opened up. [133] After that he opened up a saloon in Santa Cruz; a bar and a hotel upstairs, a small hotel. I patronized his place. I became friendly with him. He stayed at my house for, I would say, a couple of months. He was an Italian. He spoke Italian. He paid board and room, \$12.50 a week, close to forty or forty-five dollars a month, because a lot of times he would bring home food, too. A lot of times he would eat outside. At our house he ate whatever the family ate, dinner and breakfast and lunch, anything. We became friendly, we went to shows. Occasionally we went to San Francisco together. My family went to the shows with him, the children. Later he brought his family to Santa Cruz. The family consisted of two girls and a boy and his wife. He lived in a hotel first, after the family came, and then after he sold his saloon, or gave it up; I think he sold it, and he bought a home for himself and family and lived in the home with his family there. My family and I visited his family and he and his family visited me and my family pretty often. We would go out together. I don't know about going to church together; I didn't go to church in the summertime. On the day his family came to San Francisco, or Oakland, and he went to get them, I

(Testimony of Salvatore Maugeri.)

took care of his bar. I did not know the man before he came to Santa Cruz, or know anything about him. All I know about the man other than that is what I have heard in court, here; that is all I know about him.

I met Mr. Tocco in Santa Cruz around November, I don't remember the date, 1943. I first met him at Lagaipa's saloon. Lagaipa introduced me to him as his friend. He told me he was from the East. I also met Mr. Lagaipa's brother-in-law; I don't know the name; they called him Jack, but I don't know the last name. I did not have much conversation with Tocco thereafter. The only thing he said, he tried to buy this saloon off Lagaipa. He said [134] he was coming in for that purpose; it wasn't my business. I didn't have much conversation. I don't know how long Tocco remained in Santa Cruz. He was at my house about a week. Then he went away. The second time I saw him in Santa Cruz was in March, 1944. Mr. Lagaipa brought him to my house and said if I have a room for him, and he said he had no room, and I know him before, so I said, "Yes." I let him stay at my house. He stayed there a couple of weeks. I did not charge him any rent. Tocco left again and came back to Santa Cruz the third time near July—I wouldn't say the day, but it was the beginning of July. I first saw him when he came to my house and inquired for Mr. Lagaipa. I hadn't seen Lagaipa for a long time and I told Tocco that. Tocco stopped at my place. He asked me to stay there. He stayed pretty

(Testimony of Salvatore Maugeri.)

near to the end of July. I understood his business at Santa Cruz was buying tomatoes and olive oil. Of course, I didn't ask him, it didn't interest me why he was there. By that time Tocco and I were friendly; my family was friendly with him, too. He went out with us. I took him to San Francisco occasionally. I went, myself, and I took him, too. We went to the show with him. He brought presents for the children. He was Italian and spoke Italian.

Concerning a man named Joe Barri, I know the name Joe, another Joe. I first met him about the first two weeks after Tocco came the first time. I saw the first and last time. That was around the end of July, 1944. Joe Tocco brought him, the other Joe, down to the Boardwalk, and introduced me to him. He said this man, he knows he was sick, kind of rheumatism, and he thinks sun baths will do him good. He says he was from the East, but I didn't ask what part of the East. He asked about staying at my house. I told him I didn't have much room, but if they were willing to sleep together they were welcome. They slept together [135] in the same bed. They stayed there together about two or three days, I guess. Then they went to the Santa Cruz Mountains and rented a cabin up there in the mountains. I went up there to visit them a couple of times, myself, and the family went a few times and visited them. They visited in my house, too, and we became rather friendly. We went to shows and went on trips together. On one occasion I took Tocco and Barri, the other Joe, to San Francisco,

(Testimony of Salvatore Maugeri.)

with some grips. That was once. I don't remember the date, but I remember now because I heard the date. I heard the testimony here about Wednesday, the 9th. I happened to be going to San Francisco that day to buy groceries for my family. I went once a month, or whenever we needed groceries, to San Francisco. We go down and get wholesale. I would go and buy merchandise for the concession, too. On this particular trip I knew that Tocco and Barri had to take the bus. I know transportation was kind of hard to get and they got to stand up. I told them, "If you boys wait until Wednesday," I said, "I take you down, because I have to go down." They said, "All right," they would wait. I took them to San Francisco. They had some grips with them. They put the grips in the back seat of the car. When we got to San Francisco the first place I stopped was at the olive oil place on Twenty-fourth and Howard, to order some oil. I stopped at Twenty-fourth and Howard, now Van Ness South. I ordered some oil, Italian oil. Then I went down to North Beach from there. I went to the bar of this man Scambellone. I have known him about thirty years, and at times I visit his bar in San Francisco; every time I go down to San Francisco. I have had drinks there and eat there. On this particular day I had a drink while I was there. I did not take Tocco in with me. I took the other Joe. They asked about leaving their grips there. They told me they would get [136] reservations to go back East. They say they can't get res-

(Testimony of Salvatore Maugeri.)

ervations, and if I have a friend to keep the suitcase until they get reservations. I say I got a friend, and I ask him if he was willing to keep the grips until they get the reservations. He was willing to do it. Then I stopped a taxicab there. I knew the driver before, for about twenty years. He took the grips to Scambellone's place. Then I went to buy my groceries. I stayed until five o'clock. Tocco and Barri say they have to go, as soon as they can get transportation, reservations, they go back East. I left Mr. Tocco off at Geary street; I don't know what ticket office, but the ticket office. I did not make another stop. After I left Joe there—I don't know the last name, I went to buy my groceries. I don't know the name of the street. It was up on Pacific; I went to Van Ness. Then I remember I got to buy spaghetti, and I went to the factory on Pacific, the macaroni factory. Then I go back to the Beach again. I saw Joe—of course, I don't know the last name. I told him good-bye; that is all, just a couple of drinks together and say "Good-bye." Then I went back to Santa Cruz at about five or five-thirty. I took my car and went back home.

I met Mr. Pocoroba at Santa Cruz. I don't remember when I first met him, but it was around May. I know him under the name of Vicari, Benny Vicari. He was walking and I was working. well, walk back and forth, and one morning he said, "Good morning," and I say, "Good morning." That was on the Boardwalk at my concession. All that time he stop and talk and I talk to him. I see him

(Testimony of Salvatore Maugeri.)

a couple of times a day and on occasions we talk together. Finally, one morning he asked me if I am Italian. I said, "Yes." He said so was he. I said, "I am glad to know you." I speak Italian. I asked him where he is from; he said he was from Philadelphia, Pennsylvania. From that time on I [137] saw him, not exactly every day, but two or three times a day or a week or more; I couldn't recall the number. I saw him during the day, and on the Boardwalk at the concession. After I first met him it was a couple of weeks, I think, before I had him over to my house. I invited him to my house. He had trouble eating. He said he was in an accident, had injured mouth or jaws. I said, "That's too bad, I feel sorry." He said, "I got a scratch in the leg." Sometimes I feel sorry because I see he has hard time eating, so I told him to come to my house anytime he wants. He came about twice or once a week, or three times a week. Sometimes he would bring chicken and rabbit and my wife would cook it for him, and he would eat his share. He went to shows with me and my family, and walks; not much walk, because I was working. He go to the Boardwalk with me. A couple of times I took him to San Francisco with me. I did not take him when I took Tocco or Barri. Well, I won't say; I don't remember. Once in a while my children called him "Uncle Benny." They played with him. He was a nice man. I got nothing against him. One day he talked to me about his income, how much he was getting a month. We would talk

(Testimony of Salvatore Maugeri.)

lots of times about money, how much we got, and everything. He said he got very nice income. We start talking, you know, and he said he got about \$500 a month. I say, "You lucky." I said, "You got nothing to worry about." I said, "I wish I have that much myself, but I am not so lucky." Concerning the talk about narcotics, I don't know how it came up, but I think he did mention something about that, but I didn't pay no attention. I don't recall how it started, but he mentioned it; he said he had the good sense to save his money while he was young. I said, "You must have had lots of good business to make that much money." He said, yes, he had good business, he made good in business. I said, "All right," but I [138] didn't pay attention to the business, but occasionally he would come out and say he was doing some narcotic business, so I quit talking to him, because I don't like it, what he was talking about, but I didn't pay no attention. I guess he did ask several times if I could get narcotics for him, or knew where to get them, he had a good connection, but I don't recall how it started. I told him about the trouble that I had had once before. I told him I wouldn't have nothing to do with it, because I had trouble once, and that was once, and I had my family to take care of.

I did not know that Tocco and Barri and Lagaipa had anything to do with narcotics. I don't know anything about it. My family and I associated with them all the time. We would not have done that, we

(Testimony of Salvatore Maugeri.)

would not have had them come to our house if we had known they had anything to do with narcotics.

In the course of my conversations with Mr. Pocaroba, he did say something to me that he used to import the stuff, or bring it in from Germany. He said they have good connections in Europe and had a chance to bring it from over there. He said he had somebody paid on the boat. I think he did show me a letter from Chicago, one of the letters that are in evidence here. I don't know which letter it was. It was written in Italian, supposed to have been from some friend in Chicago; that's what he said. I read a couple of lines; I don't pay no attention. The letter talked something about paste, making paste. I think he told me about another letter from Chicago, but I don't recall what he said. He told me that he had a son in the Air Corps; he was an aviation instructor. Concerning the question of his son flying to Mexico, or Canada, he said they could. I don't know whether they could. He said he was flying to lots of parts of the country, Canada and Mexico. Concerning his son going to Mexico, [139] he said he has a chance to go if he had to go. I didn't say anything about that. He asked me if I know anybody, if I got somebody to trust to go to Mexico to get the stuff. I say no. He has the friend, he could go himself if he wants to. I told him I had nothing to do with it. I said, "I know nothing about it, I don't want nothing to do with it." He never mentioned my boy in the service. He said he came here from El Paso, Texas. I never used the term



(Testimony of Salvatore Maugeri.)

“mud.” I don’t even know what it is. I don’t remember the word “paste” used in Italian. Tomato paste is what we use for cooking. I mean the word “conserve.” We talked about narcotics just once in a while, but I never discussed it. He mentioned it a few times, but not much. We never talked any more, because I had nothing to do with it. He wouldn’t talk to me any more about it; there was no more conversation about it for a long time, until about an hour and a half or two hours prior to the arrest.

After I returned to Santa Cruz from San Francisco after having taken Tocco and Barri up there I later saw them again in Santa Cruz. It was one night, I don’t recall if it was Friday or Thursday, I wouldn’t say for sure. One, not both. I also saw Pocoroba again in Santa Cruz after I came back from San Francisco. I asked Pocoroba if the boys, meaning Tocco and Barri, could stay in his cabin. I asked Pocoroba, myself. I had a phone call from Tocco. He called me, I think it was Thursday night, or Friday morning, something like that, because I was busy working. He said he missed the other Joe, and he was worrying about what happened to him. I said, “I haven’t seen him.” He said, “If you see him tell him to call me, too.” I told Pocoroba that I had received such a call, and if he saw Joe Barri to let Tocco know about it. Tocco did not say he was coming back to Santa Cruz. Later I saw Tocco in Santa Cruz. I saw him at [140] Benny’s house, Mr. Vicari. I saw both Tocco

(Testimony of Salvatore Maugeri.)

and Barri there on Saturday evening. I don't know the date, but I think Saturday, I know. I did not hear any conversation at that time about narcotics, nor did I have any talk with Joe, or Joe Barri, or Joe Tocco, about narcotics of any kind. I was in the house there about five or ten minutes. I had a drink. On that day, just prior to that time, Pocoroba came to me at the Boardwalk and asked me to telephone to the bar up there in San Francisco. He said that Joe wants me to call in San Francisco to find that Joe and tell Joe to come back to Santa Cruz. That was before Tocco came back to Santa Cruz that Pocoroba came over to my concession. He told me the other Joe wants me to call up in San Francisco and tell Joe Tocco to come back to Santa Cruz, to call him some place, he didn't state where. I told Pocoroba, I give the phone number, this place where it was, Scambellone. I says, "Here is the phone number, tell Joe to call him." I said, "I am working, I can't leave work." I give the phone number to call and tell him to talk to Joe. I was too busy; I had no time. It was Saturday night. I gave the phone number to Mr. Pocoroba and said for Joe to do that, himself, if he wants to.

"Q. On Saturday evening, August 12th, I will ask you if all of that Saturday you were working at your concession.

A. Well, except when I went to eat.

Q. Did you go to this cabin Saturday night?

A. Yes.

(Testimony of Salvatore Maugeri.)

Q. About what time was it?

A. Oh, after 11:00, 11:30; I don't recall what time it was.

Q. You went there as you are accustomed to go frequently to have a drink? A. Yes.

Q. You were there, and you had a drink?

A. Yes.

Q. What did you see there?

A. I saw both Joes there.

Q. You saw both Joes there. What were they doing when you [141] got to the cabin?

A. Both outside in the passageway.

Q. What were they doing?

A. I don't know what they were doing; they weren't doing nothing.

Q. Did they say anything?

A. They had some kind of box, but I don't know what it was.

Q. Box of some sort? A. Yes.

Q. Did you pay any attention to it?

A. No.

Q. You went in? A. I went in.

Q. Did they go in? A. Yes.

Q. All three of you? A. Yes.

Q. Did you have a drink? A. Yes.

Q. How long did you stay?

A. About six, not more than ten minutes.

Q. Then you left? A. Yes.

Q. Where did you go? A. Back to work.

Q. To the concession? A. Yes.

Q. What time did you leave the concession?

(Testimony of Salvatore Maugeri.)

A. Around quarter to two, or fifteen minutes, twenty minutes, something like that.

Q. Then where did you go? A. Home.

Q. To your home? A. Yes.

Q. Did you go to bed? A. Yes.

Q. The following Sunday morning what did you do, August 13th? Did you get up?

A. About 7:00 or 7:30.

Q. Where did you go?

A. Went down to the Boardwalk again.

Q. Went down to the Boardwalk again?

A. Yes.

Q. To your concession? A. Yes.

Q. What for? A. To stock my shelves.

Q. How long did you stay there?

A. About an hour or an hour and a half.

Q. Tell me, did you go back home?

A. Yes. [142]

Q. How? A. In the car.

Q. What kind of a car? A. Chevrolet.

Q. You drove in? A. Yes.

Q. What time do you think it was when you got home?

A. I couldn't say the time; it was around 9:00 o'clock; 9:15.

Q. Sometime around 9:00 o'clock?

A. It was a little after 9:00.

Q. What did you do when you got home?

A. I had my breakfast and read the paper.

Q. Was your wife home? A. No.

Q. Where was she? A. At church.

(Testimony of Salvatore Maugeri.)

Q. She had not come from church yet?

A. No.

Q. How long did you stay home?

A. About 11:30; I mean 10:30.

Q. Then where did you go?

A. I went back to work about twenty minutes to eleven.

Q. Back to the concession? A. Yes.

Q. On that day did you see Mr. Poceroba?

A. Sunday?

Q. Yes. A. Yes.

Q. What?

A. Yes. I meet him when I went to work; I meet him outside.

Q. Did you then talk to him?

A. Yes, I said, "Good morning."

Q. On the following Monday did you see Poceroba? A. No.

Q. Tuesday? A. No.

Q. Wednesday?

A. Wednesday, yes; Wednesday evening.

Q. Were you arrested Wednesday?

A. Yes.

Q. Where? A. My home.

Q. When you had come from work at the Boardwalk? A. Yes.

Q. Did you see Poceroba?

A. Shortly before.

Q. Where? A. In the concession.

Q. Did you have a conversation with him?

A. Yes. [143]

(Testimony of Salvatore Maugeri.)

“Q. What did he say?

A. I don't recall what he said. He said he wants ten cans of dope and he said to me he wants to take ten cans of dope, to help him. I said, 'I don't need no help, I got no dope.'

Q. He asked you if you could get it for him?

A. Yes.

Q. What did you tell him?

A. I said, 'I haven't got it.'

Q. What else did you tell him?

A. That is all. He said, 'Forget about it.'

Q. Then you were arrested?

A. Around six o'clock, quarter to six I went home and as soon as I stepped out of my car, not my car, but my nephew's, the officers were there, they all jumped me and put me under arrest.

Q. Put you under arrest. When you left Saturday night—when you had a drink in Pocoroba's cabin and left to go back to work—

A. Yes.

Q. Did you say anything?

A. I said, 'Maybe I see you boys tomorrow.'

Q. Then you left? A. Yes.

Q. Did you knock on Pocoroba's cabin at 3:00 or 3:30 the next morning, Sunday morning?

A. No.

Q. Where were you at that time?

A. Asleep, in bed.

Q. You were home in bed with your family?

A. Yes.

Q. Did you tell Pocoroba that you drove Tocco to Berkeley? A. No.

(Testimony of Salvatore Maugeri.)

Q. Did you drive him to Berkeley?

A. No.

Mr. Abrams: "That is all."

#### Cross-Examination

I don't know when Tocco left Santa Cruz. The last time I saw him was just before eleven, a little after eleven, Saturday night, in Pocoroba's house, in the cabin. I went to the cabin at that time, quarter after eleven, to have a drink [144] with him. I walked up from the concession; it is not far, it is about a block, not even a block. I saw Pocoroba, Joe Tocco and Joe Barri in the cabin. Nobody else was there. Pocoroba was there. They had the boxes. I didn't pay much attention. I went in before the boxes were brought in. Joe Tocco and the other Joe brought the boxes in. I guess each one of them had a box. I didn't pay much attention to where they carried the boxes. I went out there and they give me a drink and that is all I know. I wasn't interested in the boxes. When Joe Tocco came in the cabin with a box I never paid no attention, I don't know what he did with it. When Joe Barri came in with a box I don't know what he did with it. The box you show me, Government's Exhibit 3, resembles the box I saw. It is about the same size. It had a paper on the top. It was covered. I never asked them what was in the box. I remained in the cabin that night not more than ten minutes; just enough to have a drink and go back to work. My daughter took care of the concession

(Testimony of Salvatore Maugeri.)

while I was away. I did not have any conversation with Pocoroba while I was in the cabin; just had a drink. I did not have any conversation with Tocco. Tocco did not tell me that he was going to leave in the morning. Barri did not tell me he was going to leave in the morning.

I first met Lagaipa in Santa Cruz in 1943 on the Boardwalk. I had not known him prior to that time. I had never lived in New York. I know nothing about Lagaipa's previous record. He lived at my house during a period of time, a little over two months. He paid rent while he was at my house. He was not engaged in business, he was looking. Later he bought a concession, a beer concession, but he didn't open it, and then a bar. The name of the bar was "Red Devil Inn." I last saw Lagaipa the beginning of June. I don't know if he had a criminal record. [145]

I first met Joe Tocco in November, 1943, in Lagaipa's place. He was introduced to me by Lagaipa under the name of Joe Tocco. I did not have a conversation with Tocco at that time, just "Hello." I think his reason for being in Santa Cruz was that he came to buy Lagaipa's place. He did not live at my house during that visit in November, 1943.

I next saw Joe Tocco in the spring, March or April, I think it was, 1944, at Lagaipa's house, with Lagaipa. The conversation I had with him at that time was if I had a place for him to sleep, because Lagaipa had no place at his house. I said, "Yes." He stayed at my house quite a bit. He did not pay



(Testimony of Salvatore Maugeri.)

rent. He was a friend. You know, I figured they bring the presents to the kids and, naturally—he hardly ate anything, just slept mostly. I charged Lagaipa rent. He stayed two months. I did not charge Tocco anything. I think I did charge him the first time, yes; I recall I did. I think \$12 or something like that. He stayed a couple of weeks or a month. I don't know what he was doing in Santa Cruz when he visited me in March, 1944. He was stopping at my house. I do not know that he had any business. He said he was a commercial buyer of oil and whatever he can get, that is what he came to Santa Cruz for, to buy things in California. He came to Santa Cruz and stayed a month in March of 1944 to see Lagaipa. Lagaipa had a house, but no room for him to sleep in. He stayed with me. When he left in March he did not tell me where he was going.

I next saw Tocco in July of 1944. He came direct to my house. He said he was looking for Lagaipa. I did not see Lagaipa at that time. At that time he did not tell me what business he was in. He did not tell me why he came to Santa Cruz again. In March it wasn't still cold in Santa Cruz; it was warm; it was before the outdoor season. My concession is open pretty near [146] all year around. When Tocco came to Santa Cruz in July he lived in my house. I did not charge him any rent this time. He said the business he was engaged in in the East was a fisherman, a wholesale fish—he had a fish store in New York. He said his folks, that is what he

(Testimony of Salvatore Maugeri.)

was talking about. In one way it did seem strange to me that he was making those frequent visits to a place like Santa Cruz, but the man said he bought merchandise, oil, or tomatoes, or whatever he can get. I didn't pay much attention.

I first met Joe Barri close to the end of July on the Boardwalk. I met him through Tocco. Tocco introduced him to me. He said he was a friend of his. He introduced him to me under the name of Joe; just Joe. He didn't tell me his last name. He did not tell me where he came from. He said he was sick with rheumatism, wanted to get sun baths on the beach; that is what he was doing in Santa Cruz. At that time Barri stayed a couple of days at my house. Before meeting him he had not been up to my house. He went to my house that night. We went together. I did not ask him to go up to my house. Joe Tocco asked me if there was a place for him, too. He met me at the concession, and we went up to my house together. I don't recall whether he had luggage. I think he had luggage; some luggage, some suitcase. I couldn't tell you the kind of a suitcase. It was around about July 6th when Tocco came to my house, the last trip: I wouldn't know the date. He came direct to my house from the station and he had one suitcase, like that, when he came to my house (referring to Government's Exhibit 1). I don't know if it was this, but one like it, pretty close to the same color. I would not say the same size, as I didn't measure it. He had a little cloth overnight bag, whatever

(Testimony of Salvatore Maugeri.)

they call it, also. Those men left my house at the end of July and went up to Felton for a couple of [147] weeks. They then returned to my house on a Sunday. I saw the bags they had when they came back from Felton. They were the same bags. Barri had one bag, I think. Tocco had one, and the little bag. The big one and the little one. Tocco carried the tan bag. Those men returned to my house from Felton on a Sunday morning and they remained until August 9th; two or three nights they slept there. On August 9th I drove them to San Francisco and to Scambellone's saloon, operated by a friend of mine, Pete Scambellone. I conversed with Scambellone about the suitcase because they asked me to find somebody to keep them; both Joes asked me. They both asked if I know any place they could keep the suitcase until they completed the reservations. I told them I would try. That conversation occurred on the way to San Francisco, when we arrived in San Francisco, up at Scambellone's. When we were coming down and one Joe stopped to go down to the ticket office to find the reservation, and I drove the other Joe to North Beach. The conversation I had with Joe Barri about the conversation occurred when we were coming down, arriving in San Francisco, going right along the street. I don't even know the streets. That was before Joe Tocco left to go to the ticket office. They did not know whether they would get the reservations, or not. They asked me to find some place to leave the suitcase. The suitcases were

(Testimony of Salvatore Maugeri.)

then in the back of my car. I saw the suitcases. I left them in the car. I did not lift them up at all. I don't know if there was anything in the suitcases. I don't know if that big suitcase was empty at the time. Then the taxidriver took them to Scambellone's house. Later I went to Scambellone's house that day. That was about eleven o'clock, before noon, that I arrived there. I did not see the suitcases then. I was not up at Scambellone's house after the suitcases had been brought into the house. I [148] left for Santa Cruz about 5:30 or quarter to six and arrived in Santa Cruz that same evening. I left Tocco and Barri in San Francisco. I was at my concession on the following day, Thursday. I saw Mr. Pocoroba on the Boardwalk. I couldn't say what time it was. I did not have a conversation with him about the two Joes using his cabin on that day, Thursday. That conversation occurred the next day, Friday. I just tried to do my best—I couldn't remember every word that was said when we were talking—we forget what we were talking about. I just stated a little while ago that Joe Tocco, he called me up and was worried about missing the other Joe, and asked me if I seen him, and I said, "No, I don't." Concerning the conversation about using Pocoroba's cabin, I say, "In case Joe come back I got no place at my house; a friend of mine and his family comes from San Francisco and I have no room." I said, "If he comes back have you room for him?" And he said, "Yes." That conversation occurred on Friday.

(Testimony of Salvatore Maugeri.)

“Q. Had you seen Barri yet?

A. On the night.

Q. Had you seen Joe Barri?

A. Yes, in the evening later.

Q. What evening? Friday or Thursday?

A. Friday.

Q. As a matter of fact, you had seen Joe Barri the previous evening, Thursday evening, hadn't you?

A. No, Thursday—I wouldn't know—I just stated before, because I don't remember whether it was Thursday or Friday.

Q. Isn't it a fact you returned from San Francisco on Wednesday night?

A. Yes, Wednesday night.

Q. And that Joe Barri returned Thursday night, and that Tocco didn't return until Friday night; isn't that the fact?      A. I don't remember.”

The witness testified further: I did not have room in my house to permit the two Joes to stay there, because a family [149] from San Francisco wanted to stay the weekend. I have about ten rooms in my house, but they are not all bedrooms. There is the front room, the dining room and kitchen and everything. We have four or five bedrooms. I have a big family, myself. We all have a room. My brother and my nephew live there beside my family. My brother's name is Vincenzo. We call him Jim for Vincenzo. He is in business with my nephew in the concession. He does not have an automobile. My nephew lives there, also. His name is Dominic. He has an automobile. It is a Chev-

(Testimony of Salvatore Maugeri.)

rolet coupe. Once in a while I drive that car, myself. That car is kept in the garage at my house. There is also a Coastguardsman who lives there. He has a room. My son owns the Oldsmobile. My son is in the service. I have been driving that car for many months and that car is also kept there. There is also a Pontiac automobile kept there that belongs to my boy. I think I have driven that once or twice.

“Q. When did you first meet Benedict Poceroba?

A. In the spring; I don't recall the date.

Q. You and he became pretty friendly, did you?

A. Yes, sir.

Q. And how long had you known him before the subject of dealing in narcotics was brought up?

A. Oh, it was a long time.

Q. Well, about how long?

A. I couldn't remember.

Q. Do you remember where the conversation took place?

A. All the conversation was on the Boardwalk.

Q. On the Boardwalk? A. Yes, sir.

Q. Well, he visited you at your home, didn't he?

A. Yes, sir.

Q. And you drove him back from your house to his cabin, didn't you, in your automobile?

A. Once in a while.

Q. And you had conversations while driving in the automobile, didn't you? A. No, sir.

Q. Never talked while you were in the automobile? [150] A. No, not narcotics.

Q. Now, what is your best recollection as to

(Testimony of Salvatore Maugeri.)

when you first discussed narcotics with Pocoroba?

A. Oh, I couldn't say, because he mentioned a lot of things a lot of times, and I didn't pay no attention.

Q. You weren't interested at all in narcotics?

A. No, sir.

Q. And you told him at that time you had been convicted of counterfeiting and served two years in the penitentiary?

A. Yes, on one occasion I did.

Q. And did you use the expression that dealing in counterfeit was a lousy business?

A. No, I said I got a bum deal.

Q. You said you had a bum deal?                   A. Yes.

Q. You never told him you didn't intend to have anything to do with counterfeiting any more?

A. No, I haven't got anything to do with anything.

Q. You told him you were willing to take a chance dealing in narcotics for ten or twenty thousand dollars but not for a few hundred?

A. Never mentioned anything.

Q. Did he tell you—did you ask him if he had any contacts in Chicago, and he said he might?

A. No, sir.

Q. And did you the following day ask him to write a letter to Chicago?                   A. No, sir.

Q. Then about a week later did he show you a letter?

A. He showed me a letter once, but I don't know when.

(Testimony of Salvatore Maugeri.)

Q. Do you know how he happened to show that letter? A. Yes.

Q. How?

A. We was talking, and he said he had a letter and wanted to get narcotics for his friend.

Q. Previously you hadn't discussed with him at all his writing to Chicago? A. No.

Q. And without any previous conversation concerning any writing to Chicago he produced a letter and showed it to you? [151]

A. He might have said something before, but I paid no attention to him.

Q. Did he tell you at that time that his friend wanted to buy ten cans of opium for \$150 a can or some such price? A. No, sir.

Q. And did you say to him that you wouldn't be interested, that you would be willing to sell opium in 50-can lots for \$225 a can?

A. I never say such a word. I wasn't interested in dope at all.

Q. Did you ever discuss with Mr. Pocaroba the matter of his son who was an aviator in the United States Army bringing in opium from Mexico?

A. No.

Q. Was that subject ever discussed between you two?

A. No. He mentioned it once, he can get—just the way I stated it a little while ago.

Q. What did he say?

A. If he could trust somebody, he has the son who can fly.



(Testimony of Salvatore Maugeri.)

Q. If he can trust somebody?

A. Yes, if he can trust somebody to get it.

Q. What did you say?

A. 'There is nobody else you can trust more than yourself and the son.'

Q. You didn't visit Pocoroba's cabin very often, did you?      A. Oh, yes.

Q. About how often?

A. Sometimes twice a day, sometimes once, any time I had a chance.

Q. Why did you go there so often?

A. We were all together, just passing the time together. He stayed at my concession, and I go down to have a drink a lot of times.

Q. When you left the cabin on the evening of Saturday, August 12, after eleven o'clock, where were those two cardboard boxes?

A. I don't know. [152]

Q. Did you see them?

A. I don't pay no attention.

Q. Didn't see them in the cabin?

A. Yes, they brought them in, but I didn't see where they put them.

Q. You weren't curious as to what they contained?      A. It was not my business.

Q. Did you see the suitcases?

A. No, I didn't.

Q. Didn't see that suitcase in the cabin?

A. No.

Q. Did you see the other cloth bag?

A. No, I didn't see it.

(Testimony of Salvatore Maugeri.)

Q. You referred to the reference, to a word 'paste' in one of the letters. Did you know what that meant?

A. No, I don't. I thought it was conserve or paste the way we have it.

Q. Do you know what the expression 'mud' meant?      A. I never heard of it.

Q. Have you ever been convicted of a violation of the State poison law?      A. Poison?

Q. Poison, the State poison law.

A. I don't know what it is.

Q. Have you ever been convicted, I am asking you, on a charge of violating the California State poison law.

A. I have never been convicted except once, the counterfeit conspiracy; that is all.

"Mr. Hennessy: I think that is all.

Mr. Abrams: That is all.

The Court: Just one question. I am a little bit confused.

Q. You were arrested on the 16th, was that the day, the 16th of August?

A. The 16th of August.

Q. Now, how long a period of time was there between the time that you first talked with Mr. Pocoroba about narcotics——

A. About an hour and a half.

Q. Wait, listen. How long a period of time was there from the time you first talked with Mr. Pocoroba, in weeks or [153] months, how long a period was that?      A. I couldn't recall, sir.

(Testimony of Salvatore Maugeri.)

Q. About when was that that you first talked with him about the narcotics on the Boardwalk?

A. He mentioned that quite a few times.

Q. About when was the first time that happened?

A. I couldn't remember.

Q. About how long after you met him?

A. Oh, about a month or more.

Q. You met him first when?

A. In May sometime.

Q. So it was sometime in June when he first talked to you about narcotics?

A. Just about, but I couldn't recall the day.

Q. Is this a fair and correct statement; that it was sometime during the month of June, if it was a month afterwards?

A. Just about that. I couldn't say the date, you know.

The Court: Any other questions of the witness, gentlemen?

Mr. Hennessy: Now further questions.

Mr. Abrams: No questions.

The Court: The witness may be excused.

Mr. Abrams: The defense rests.

The Court: Has the plaintiff any rebuttal?

Mr. Hennessy: No, we have no rebuttal.

Mr. Abrams: I want to consider some additional evidence by stipulation.

Mr. Hennessy: I have no objection.

Mr. Abrams: I forgot to ask the agents or Mr. Maugeri when they were on the stand about searching the premises, and I think it can be stipulated

rather than putting them back on the stand, that following Mr. Maugeri's arrest on August 16th his house was searched by the agents, and also [154] his safe deposit box.

Mr. Hennessy: I was advised by Major Manning that there was no safe deposit box. The house was searched with his consent but no narcotics found.

Mr. Abrams: Also a safe in the house?

Mr. Hennessy: Major Manning believes there was.

Mr. Abrams: Also a safe in the house, and his house was searched, and no narcotics were found.

The Court: Let the record show that the jurors are present when the stipulation was made.

Mr. Hennessy: Yes."

[Endorsed]: Lodged Feb. 2, 1945.

[Endorsed]: Filed Feb. 2, 1945.

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[Title of District Court and Cause.]

#### ORDER SETTLING BILL OF EXCEPTIONS

Pursuant to stipulation of counsel, it is hereby ordered that that certain document of one hundred thirty pages, lodged with the Clerk of this Court on February 2nd 1945, entitled Bill of Exceptions, of the defendant Salvatore Maugeri may be and the same is hereby considered to truthfully set forth the proceedings had upon the trial of the defendant Salvatore Maugeri and that it contains in narrative form all of the testimony taken upon the trial together with all of the objections made by

said defendant and the rulings thereon and the exceptions noted by said defendant and it may be and is hereby settled, allowed, certified and approved as the Bill of Exceptions in the above entitled matter;

And it is further ordered that the Clerk of said Court file the same as a record in said case and transmit it to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Dated: February 2nd, 1945.

LOUIS E. GOODMAN

United States District Judge.

[Endorsed]: Filed Feb. 2, 1945. [156]

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[Title of District Court and Cause.]

ADDITIONAL AND AMENDED ASSIGNMENT  
OF ERRORS. STIPULATION AND ORDER

Comes now Salvatore Maugeri, defendant above named, and hereby amends his assignment of errors heretofore filed in connection with his appeal herein by adding thereto the following exceptions and assignment of errors:

10. That the trial court erred in rendering judgment on each of the verdicts of guilty, finding defendant guilty on both counts one and two of the indictment, in that said counts of said indictment state facts constituting but one offense.

11. That the trial court erred in ordering the

sentences, pronounced by the court in rendering judgment on counts one and two of the indictment, to run consecutively in that said counts of said indictment state but one and the same offense.

12. That the pronouncement of judgment upon both the verdicts finding defendant guilty on both counts of the indictment [157] and ordering said sentences to run consecutively, constitutes a violation of the double jeopardy clause of the Fifth Amendment to the Constitution of the United States in that the facts stated in counts one and two of said indictment constitute a statement of but one and the same offense.

Dated: January 31, 1945.

SOL A. ABRAMS

Attorney for Defendant

#### STIPULATION

It is hereby stipulated that the foregoing additional and amended assignment of errors may be filed in the above cause and appeal with like force and effect as if said additional assignment of errors were contained in the original assignment of errors filed by said defendant and appellant and that the above entitled court may make its order to such effect.

Dated: January 31, 1945.

FRANK J. HENNESSY

United States Attorney

SOL A. ABRAMS

Attorney for Defendant

## ORDER

On reading and filing the foregoing stipulation and good cause appearing therefor, it is hereby ordered that the foregoing additional and amendment assignment of errors of defendant be filed herein with like force and effect as if said additional assignment of errors had been included in the original assignment of errors filed by defendant Salvatore Maugeri in support of his appeal herein. It is further ordered that the Clerk of the above court include said amended and additional assignment of errors with the record and proceedings and forward the same to the Appellate Court pursuant to Rule 8 of the Rules of Practice and Procedure after plea of guilty.

Dated: February 2nd, 1945.

LOUIS E. GOODMAN  
District Judge

[Endorsed]: Filed Feb. 2, 1945. [158]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 158 pages, numbered from 1 to 158, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of The United

in support of appellant's position, appellant believes it necessary to print the entire record.

Dated: February 2nd, 1945.

LEO R. FRIEDMAN

SOL A. ABRAMS

Attorneys for Appellant

Receipt of a copy of the within Statement is hereby acknowledged this 2nd day of February, 1945.

FRANK J. HENNESSY

United States Attorney

[Endorsed]: Filed Feb. 15, 1945. Paul P. O'Brien, Clerk.